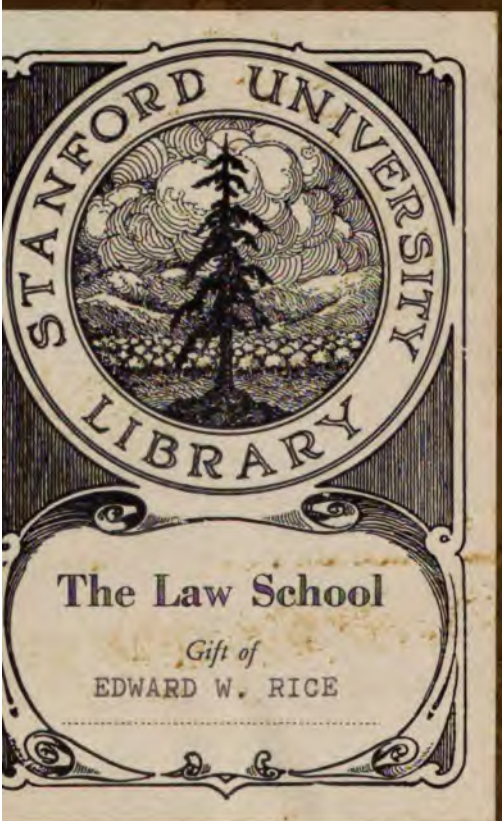

LEWIS
REAL PROPERT
1645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LEWIS

REAL PROPERTY

1845

AN

INAUGURAL ADDRESS

ON THE STUDY OF THE

English Laws of Real Property, &c.

AN

INAUGURAL ADDRESS

ON THE STUDY OF THE

English Laws of Real Property,

DELIVERED IN

THE HALL OF GRAY'S INN,

ON

THURSDAY, THE 4TH OF NOVEMBER, 1847.

BY

WILLIAM DAVID LEWIS, ESQ.
LECTURER ON THE LAW OF REAL PROPERTY AND CONVEYANCING,
APPOINTED BY THE SOCIETY OF GRAY'S INN,
AND
AUTHOR OF A TREATISE ON THE LAW OF PERPETUITY.

WITH

AN OUTLINE

OF THE

PROPOSED COURSE OF LECTURES.

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TO THE

RT. HON. SIR HERBERT JENNER FUST, KNT.,

TREASURER,

AND TO THE OTHER

GENTLEMEN OF THE BENCH

OF THE

HON. SOCIETY OF GRAY'S INN,

The following Address,

DELIVERED UNDER THEIR SANCTION,

IS (BY THEIR KIND PERMISSION,)

MOST RESPECTFULLY INSCRIBED,

BY THEIR FAITHFUL AND OBLIGED SERVANT,

THE AUTHOR.

ADVERTISEMENT.

It is necessary to explain that some parts of this Address, although previously written, were, in order to avoid an undue detention of the audience, not actually delivered on the occasion referred to.

AN

INAUGURAL ADDRESS,

&c. &c.

THERE are occasions in ordinary life when the efficient discharge of duty renders it indispensable almost entirely to suppress the influence and withhold the expression of the sentiments which, for the time, are most active within us—sentiments, it may be, appropriate and becoming, but withal not of an invigorating, or impulsive character. Such an occasion is that which this day assembles us together, when a chair is about to be founded for the public exposition of a most important and extensive department of English Law, with a desire to promote the great end of sound Legal Education. It is unnecessary to detail to you the circumstances under which the Lectureship has been established, or the liberality wherewith every thing in relation to it has been arranged by the authorities of this Inn. This would not be the place, nor the time, suitable for such a review. In any case, however, the feelings of a public Law Lecturer, at a moment like the present, would properly be those of distrust and anxiety,—distrust of his ability and fitness to perform the duties of the position assigned him,—anxiety lest (as the great Blackstone remarked on a similar occasion)(*a*), if either his plan of

(*a*) Study of the Law, 1 Com. sect. 1.

instruction be crude or injudicious, or the execution of it lame and superficial, it should cast a damp upon the further progress of this most useful and most rational branch of learning, and should defeat, for a time, the wise and public spirited designs of our governors. And it may be permitted me to add, that the very flattering manner in which your Lecturer has been appointed to his office is calculated greatly to enhance this anxiety in the present instance. It were enough, indeed, to generate uneasiness and fear, were I simply to call to mind whom it is I follow in the office of a Lecturer on Law—the immortal Bacon, whose escutcheon adorns that window—the refined, the judicious, and learned Blackstone—the acute, high souled and comprehensive Mackintosh.

Doubtless, also, the occasion which has now brought us together is regarded with feelings akin to anxiety by those learned Members of our Profession upon whom more especially rests the burthen of regulating this Society. They must naturally entertain an earnest desire that the effort now making by the Inns of Court to relieve the Student from some of the difficulties which at this day so thickly surround the acquisition of legal knowledge, should be productive of commensurate results. How far this anxiety will meet with a satisfactory answer in the issue of the plans contemplated, it may not be desirable as yet to speculate. Unlooked for circumstances not unfrequently, however promising the design, obstruct its success or impair its efficiency. In imparting the knowledge of a diffuse and complicated science, such circumstances may, with particular reason, be feared, inasmuch as, in more than an ordinary sense, much depends upon the qualifications of the instructor. While, therefore, I venture to express an earnest desire of meeting, in some small degree, those requirements of my superiors in the Profession, which, in bestowing on me the appointment, I feel that they have a right to look for, I yet must declare, in all sincerity, my apprehension, that I shall occasionally appear to them incompetent to a task so onerous, and increasing by

my own deficiencies, the difficulties which beset a successful exercise of my office.

Of my other hearers, also, of the gentlemen preparing for the Bar, who may be found among the attendants here during my progress, I must bespeak kind and patient consideration, as, with unaffected friendliness and unobtrusive sympathy, I apply myself to the elucidation of the subjects which are successively to occupy our attention. Their feelings on this occasion are probably not those of apprehension and concern, but rather of hope and expectation that, under these new arrangements, the shortest and safest paths on the one hand, and the hidden dangers of the way on the other, will be advantageously made plain. I do not desire to darken this prospect, but it suggests topics of warning and explanation which I shall hardly do well to pass over entirely unnoticed.

Concerning the nature and benefits of the mode of instruction by public Lectures it is not my purpose at any length to speak. The extent and frequency of its use in the principal departments of science, and the success with which it has been practised, are every where known. As an open and public provision for ensuring to all who seek it, a pathway through the labyrinths of legal study, and as affording testimony to the dignity and system of legal science, we hail the revival of the Professorial Office in the precincts of our societies. For may we not expect from public Lectures, those advantages to which Sir James Mackintosh (*a*) adverted, when, in the language of eulogy, he described them as "the most convenient mode in which the elements of learning can be taught," and as being "best adapted for the important purposes of awakening the attention of the Student, of abridging his labors, of guiding his inquiries, of relieving the tediousness of private study, and of impressing on his recollection the principles of a science."

(*a*) Works, vol. 1, p. 342.

Yet I need hardly remark that no one can hope to become a sound well-furnished lawyer by an attendance on Lectures alone, or even by a reliance upon them in the main. By entertaining and acting on such an idea, the Student will but insure himself trouble and vexation, if not eventual failure, in his professional course. Those who have mastered all the subtleties of that branch of legal science to which our attention is to be devoted, know well the cost of that attainment, and will readily appreciate the truth of these observations. Indeed, Lectures on such a subject can only be considered as seed sown in the field. Steady, persevering toil in private, like the constant but unobserved labor of the husbandman in, as it were, assisting the operations of Nature and developing the properties of the soil, must make that seed germinate and shoot forth, until by slow, yet sure, progress, it ripens into a full harvest of knowledge, abundantly rewarding the care and patience of the cultivator.

Not only, however, must we set due limits to our estimate of the utility of the system of public Lectures, but we should also be careful to bear in mind the particular evils attendant upon an exclusive or predominant regard to it. Attendance on Lectures, if unassisted by more fixed and concentrated efforts, is apt to generate a superficial, indolent, and impatient habit of mind. Knowledge is thereby disseminated widely, but it does not necessarily take root deeply. The great points of a science are more extensively seen and its principles obtain a freer course. But the attractions exhibited in these features of public Lectures frequently induce an aversion for those less discursive and more hidden researches which are indispensable to a thorough acquaintance with the genius and practical influence of the system taught. We slight that which is not approachable by the same road already trodden, and we find distasteful the labor and toil required in the pursuit of more occult paths. The thirst for knowledge which supplied us with the original incentive has met with a grateful draught

at too easy a cost to admit of its unabated freshness and vigor in the pursuit of other streams. The appetite is satiated, not sharpened. And the final result may be that the disposition to labor in the pursuit of knowledge is enervated by enjoyments in that pursuit tasted too early and acquired too easily upon which the sure effect of all satiety ensues, in a growing indifference, if not dislike, to the object sought.

Upon an assembly of educated gentlemen such as the Students for the English Bar, it is unnecessary to press the practical lesson which these reflections furnish. To state the evil, must with them, I am sure, be a sufficient persuasive to the adoption of the remedy. If we shew that, in this as in every useful institution, there are inconveniences and danger incidental to its very benefits, it follows that, in order to obtain a full measure of the latter, we must check, oppose, and aver the former.

There is one point connected with the revival of Law Lectures upon which I am constrained, although with the utmost diffidence, to dissent from the views of some who have given their attention to the subject. With them it is a conviction, and all but a project, that the office of Professo should be dissociated from that of Practitioner of law,—tha the former class should be formed of entirely distinct persons I pretend not to say how far this may be feasible in such departments of our law as the constitutional, and that relating to crimes and punishments. But, as to all other departments if the main design of the institution of Lectureships for Law Students be to fit them for the exigencies—the anxious an trying exigencies—of actual practice, surely it is necessary there should be a prudence, accuracy, and circumspection i the exhibition of the practical working of principles which ca scarcely be observed by any who are not *familiar* with the practical working in the details of daily business. But furthe there is an almost inevitable tendency in the Professor, who purely such, to systematise, simplify, and reduce into th

demonstrations of an exact science the subjects of his teaching, which yet all the while may not admit of it; for, as has been well said with reference to similar errors in philosophic investigation, the only means by which this could be done would be by referring to a few simple causes what in truth arises from immense and intricate combinations and successions of causes (*a*). True it is, that the jurisprudence of most civilized countries is capable of arrangement, and that principles and doctrines will be found to pervade them, which may be made to subserve large and flexible theories, but such are not the theories which satisfy the purely scientific expositor, nor does he defer to the numerous practical exceptions, conditions, and deviations which abate the precision and exactness of local jurisprudence. The results of such a system, therefore, in the case of legal science, would, it is feared, be grievously at variance with its actual state and operation amongst us. There is, furthermore, the danger pointed out by Paley (*b*), in respect to certain moralists—the danger, I mean, of "dwelling upon verbal and elementary distinctions with a labor and prolixity proportioned much more to the subtilty of the question, than to its value and importance in the prosecution of the subject."

In commencing a course of Lectures, to be continued periodically for some months, or even years, a Lecturer is naturally anxious, not only to bespeak the attention, but to excite the interest of his audience, in relation to the subject which he has undertaken to unfold. His hopes of securing the great object and reward of his labors will depend mainly on the extent, not to say intensity, of the interest so excited, and that interest will determine the measure of attention to be given to his Lectures. Unless, which is impossible, he be indifferent to success, and but little enamoured of the topics to be treated of, he will certainly be desirous of awakening, I repeat, a lively interest concerning

(*a*) Sir J. Mackintosh, Works, vol. 1, p. 378.
(*b*) M. & P. Phil. Preface, 18.

them in the minds of his auditors, and will feel that, in proportion as he fails in at least stimulating curiosity, he fails of the accomplishment of his great object. The greater part, therefore, of the present Lecture will be devoted to an enumeration of some of the grounds on which your attention is earnestly asked, and confidently anticipated, to the subjects to be brought before you.

Of these grounds, the most forcible will probably appear, if I throw out some general observations on the nature and objects of the science which is henceforth to engage our attention, therein showing its social and political importance, and the attractions which the study of it contains. I shall then add some remarks on the dispositions and habits of mind by which that study should be attended, and, finally, I shall explain the plan and course of exposition and instruction which I propose to adopt under the sanction of this Honorable Society.

I do not desire to weary you by an undue or fanciful exaltation of the merits of our faculty, or of the science of which it is the depositary. Its advantages, I am aware, may be seen and felt so exclusively of the drawbacks, intellectual and moral, which undeniably attend it, that that which ought to be a healthy preference for one's own walk in life, may come to be a serious mental distortion, overrating its importance, extending its proper province, and rendering us incapable of appreciating its real excellences, as well as unmindful of its palpable dangers and effects. But it is not, I am inclined to think, on this side, nor in this direction, that the prevailing notions of our occupations and our studies at this day err. Rather may it be said that there is abroad a low, unphilosophical, and unjust impression concerning them, which attributes to our order unintellectual communion with (so called) jargon, begotten in ages of feebleness, and selfishly perpetuated—with useless technicalities and lifeless forms. It is of the greatest possible importance, with a view to the due success of the exertions now being made for the education of

the future Bar, that these views should neither be entertained by us who direct, nor be caught up by you for whom are provided, those salutary improvements.

Briefly, then, it is one of the primary institutions of civilized life, about which we are to be conversant here, that of *property*, "the nourisher of mankind, the incentive to industry, the cement of human society"(*a*), of which Paley remarked, that "it is the principal subject of justice"(*b*); it is the *law* of property—a department of that law concerning which the celebrated Hooker said, "her seat is the bosom of God; her voice is the harmony of the world" (*c*), and of which the great moralist, Johnson, remarked, that it is "the science in which the greatest powers of the understanding are applied to the greatest number of facts;" it is the *English* law of property,—a branch of that law the study of which the accomplished jurist and philosopher already referred to—Mackintosh (*d*)—declared, "had by habit become his favorite pursuit," "which was a subject most worthy of scientific curiosity;" it is the English law of *Real Property*, the owners of which, according to the lamented Chalmers, are "the sole tributaries of the commonwealth" (*e*), but which, with its subtle distinctions, "the most difficult to be thoroughly understood," and "its long and voluminous train of descents and conveyances, settlements, entails and incumbrances, forms," in the view of Sir William Blackstone, "the most intricate and most extensive object of legal knowledge"(*f*).

It will be unprofitable to prolong our stay in the unsettled region of philosophic inquiry as to the *history* of property, and in what the right to it is *founded*. Whether the institution was coeval with the earliest pastoral governments, or whether it was the later ally of local settlements and fixed occupations,—

(*a*) Mackintosh, Works, vol. 3, p. 552.
(*b*) Mor. & Polit. Phil. vol. 1, ch. 4.
(*c*) Eccl. Polit. Book 1.
(*d*) Works, vol. 1, pp. 379 382.
(*e*) Polit. Econ., vol. 1, p. 365.
(*f*) 1 Com. 7, 36.

how it grew,—and when, from being a transitory occupancy, it became permanent and transmissible,—whether the right were the result of compact, or of consent, or priority of occupation,—these are not matters upon which, either now or subsequently, we can usefully engage. It is sufficient for us to know that civilization has never existed without it, and to believe (as far as we can form a judgment of the Divine government of the world) that it could not have done so. It subserves the still larger and more comprehensive institution of human society, and is indispensable to its order and well being, and even necessary to its continuance. One of the renowned of our own country justly says, that "the right of property is the great corner stone of all civil society;" or, in other words, that "the existence of society depends upon the existence of property" (*a*). And here may well enough rest our inquiries as to its foundation and its justice: for of this we may entertain a clear and well-founded conviction; but all over and beyond it is hazy conjecture and fanciful speculation, even if it do not (as I fear it does) deserve the stigma of dangerous dogmatism. I know not that I can find (certainly I cannot myself furnish) a better or more eloquent summary of the beneficial influences of this grand institution than is contained in the following just panegyric from the pen of the same illustrious writer just now quoted. Speaking of both property and marriage, Sir J. Mackintosh (*b*) says, "Almost all the relative duties of human life will be found more immediately or more remotely to arise out of the two great institutions of property and marriage. They constitute, preserve, and improve society. Upon their gradual improvement depends the progressive civilization of mankind; on them rests the whole order of civil life." "These two great institutions convert the selfish as well as the social passions of our nature into the firmest bands of a peaceable and orderly intercourse; they change the sources of discord

(*a*) Lord Brougham, Polit. Phil., vol. 1, pp. 17, 49.
(*b*) Works, vol. 1, pp. 368, 369.

into principles of quiet; they discipline the most ungovernable, they refine the grossest, and they exalt the most sordid propensities; so that they become the perpetual fountain of all that strengthens and preserves and adorns society. They sustain the individual, and they perpetuate the race. Around these institutions, all our social duties will be found at various distances to range themselves, some more near, obviously essential to the good order of human life; others more remote, and of which the necessity is not at first view so apparent; and some so distant that their importance has been sometimes doubted, though, upon more mature consideration, they will be found to be out-posts and advanced guards of these fundamental principles, that man should securely enjoy the fruits of his labor, and that the society of the sexes should be so wisely ordered as to make it a school of the kind affections, and a fit nursery for the commonwealth."

I fear least, by adding more, the force and the dignity of these most just and most beautiful encomiums should suffer at my hands. And yet the interest and importance of the subject may, perhaps, be further and still more clearly seen if we reflect, that insecurity of rights and instability of ownerships are among the surest signs of defective organization in the society which suffers from them; while, on the other hand, the most perfect security, and the firmest stability of private possessions and individual rights, will generally be found elements of the most refined and well-ordered civilization.

Nor yet can I omit this other consideration (wherein surely the moral dignity and value of property is sustained)—that it furnishes one of the chief means and instruments of our temporal probation. Does it not point to noble ends and uses, subservience to which is a moral condition of our title? And is not its susceptibility of employment in all cases, and its actual devotion in many, to the furtherance of those ends and uses, a most considerable enhancement of its value, no less œconomically than morally? If the great and enduring monuments which past ages, and (to its honor be it spoken) the present also, furnish

of philanthropy, charity, and piety, if these, I say, have been founded upon this institution of property, have been fashioned with it, and have derived from it their stability and value, is not the institution itself thereby strenghtened, and are not the subjects of it ennobled?

Property, then, becoming a recognized institution, it at once follows that there must be a series of facts to be investigated which have contributed to render its possession secure and valuable; and this we may call the *history of property:* and there are also a number of rules and principles defining the rights to it, and the privileges and obligations which arise out of it; and these constitute the *law of property*, or that department of the science of jurisprudence which is conversant about property, its acquisition, retention, enjoyment, disposal and transmission. Into the former inquiry, that which concerns the *history* of property, and into the various developments which the *law* of it has received, at different periods and in the different countries of the world, it is not the province of my office, nor will it be my purpose, to enter. Replete with interest, indeed, to every reflecting mind, and full of valuable instruction for the politician, the statesman, and the political economist, such a course of investigation would undoubtedly be; but ours is a more homely, a more practical course. Great also would be its philosophic value, for it would affirm the truth of those remarkable words of our own Bacon:—"There are in Nature certain fountains of justice, whence all civil laws are derived but as streams; and, like as waters do take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountains" (*a*). An aphorism this, fraught with the mature and sound discrimination which characterised almost every word proceeding from the pen of that illustrious philosopher.

(*a*) Advancement of Learning.

In every age and empire at all distinguished for civilization, the seeds of a certain instinctive right and wisdom in the regulation of the rights of property may be retraced as easily, as the fruits subsequently springing from them may be classified and numbered in the safety, order, and benefit with which they have been enjoyed. There will be found a consent of mankind in first principles which, with an endless variety in their application, is "among the many valuable truths to be collected from our present extensive acquaintance with the history of man. Much of the majesty and authority of virtue is derived from their consent, and almost the whole of practical wisdom is founded on their variety" (*a*). And, as it is the office of the moral *philosopher* and *political economist*, to mark with appropriate praise or blame those varying *qualities in the social system* under the influence of which the growth of some nations in civilization has been either quicker or slower than that of other branches in the great human family, so would it seem the office of an investigator of *law* to shew the advancement or delay of all *arrangements* and positive *provisions* which have, in different states, and with different degrees of celerity, defined, adjusted, and ensured protection to the rights of property and the privileges of ownership. But it would involve a research of all but an interminable length to bring under view, in its countless ramifications, a subject so vast, diversified, and complicated; it would be little else than to fill up with elaborate details and innumerable facts the outline of a universal history; it would really be exploring to its very sources, all that is known of the dawn of intellectual light itself throughout the world. A range of inquiry so protracted, minute, and discursive, would be alike inappropriate and tedious, and it will, therefore, be more within my province and limited capacity to restrict my observations to the enactments and provisions of English law.

But let us, withdrawing our attention for awhile from law as it concerns property simply, fix it upon *law*, general and

(*a*) Sir J. Mackintosh, Works, vol 1, p. 359.

unmixed. Let us contemplate law in its own intrinsic vastness, for it is only by so doing that we can attain a just conception of the office and the relations of any given province or department of it.

Like the other sciences, Law has both a history and a philosophy distinct from itself,—its own substance and system. Its history comprises the long series of gradations or successive steps by which it has attained its present form, acquired its actual character, and become in all respects what it now is. It traces the system from the early and slender rudiments buried in the soil of semi-barbarous customs, thence through all the storms and hazards of its subsequent growth, until it attained the altitude and the perfection which it now displays. The events which accelerated or impeded its development; the accidents which checked or warped it in its growth; all that has been favorable, and all that has been hostile to its advancement, find place in the narrative. The actual changes, the progressive additions, emendations, and alterations of which it has been the subject, are the proper topics, of a *history* of the law. Besides this record of the external facts connected with a system of law, or its history, there are further a speculation as to the grounds and reasons on which it is built, the feelings and principles whence it has sprung, the wants which it was constructed to satisfy, and the evils which it was designed to arrest; and a theory of the objects proposed and the results achieved by its establishment. This may be called the *philosophy* of the law, occupied chiefly with an attempt to elucidate its origin and explain its workings. Each of these is distinct as a subject of inquiry from the system itself, in the rights which it confers and the restraints which it imposes, the rules which it lays down, and the sanctions by which it secures obedience to them. An examination of them severally may be conducted more or less independently of the others. One person may occupy himself with the external facts connected with jurisprudence, may busy himself with arranging them in chronological order, and in becoming master of the narrative

of legal history and progress so constructed. Another may examine and discuss the internal facts of the science, its immediate or remote causes, its obvious or recondite principles, its direct and indirect influence and results, and may thus acquire a knowledge of the philosophic aspect and value of the existing system. A third may devote himself exclusively to the statute-book and the reports, the treatises and the text books of the science, and may endeavour to gather thence such a full, accurate and comprehensive acquaintance with all its provisions as shall qualify him to become a professor or a practiser of it; as shall suffice for his equipment as a pleader, a conveyancer, or an advocate. And the history, the philosophy, and the science of law have each a separate and independent interest, as well as a separate and independent existence Nevertheless, it is important to bear in mind that, in relation to jurisprudence, these several branches of inquiry are more closely connected than in relation to any other science; each has a more direct bearing on the others, and reflects a light upon them which greatly facilitates the examination of them severally. In geometry, for example, whilst it is a matter of curiosity to trace the several steps of the progress whereby the science has attained its present eminence, and acquired extent and precision, yet the knowledge of these several facts lends little or no aid to the astronomer in his observatory, or the surveyor with his theodolite. So of the philosophy of geometry. The speculations regarding those faculties of the human mind whereby the truths of the science are apprehended, their relations perceived, and their results reasoned out, afford little direct assistance in studying the science. A theory, however ingenious or correct, concerning the organs or mental powers of number, order, abstraction, individuality, and so forth, leaves the task of the Student in grappling with the actual difficulties of Euclid or of Newton as arduous as before. The complexities of an equation are not unravelled, nor the subtle relations and actual consistency of several ascertained truths detected and established, at all the more easily, because the chronological

narrative of mathematical progress has been read, and the theory of the mental powers is well understood.

But in relation to *law*, the history, the philosophy, and the science are mutually helpful; may be studied most advantageously together; and cannot, severally, be thoroughly mastered, except some considerable progress has been made in acquaintance with them all. This is obvious on a moment's consideration of the subject. Law, regarded as a system of precepts whereby the civil relations of mankind are determined and their conduct regulated, derives its significance and force from the actual circumstances in which the subjects of it are placed; from the objects proposed in its establishment; and the feelings, motives, and views of those among whom it exists. And in the same way, each individual portion of the system is dependent for its meaning and effect upon the position which it occupies in relation to the other portions, and upon the views of the Lægislator in framing, and the Judge in interpreting and administering it. The several provisions which constitute any one municipal code, are so many schemes devised to meet some social want, or to correct some social wrong, and hence they are adapted, with more or less skill, to the actual state of things to which they owe their existence. They are made for the occasion, and can only be rightly understood when the exigency of the occasion is itself accurately comprehended. For example, the Statute of Uses,—a chief corner stone in the existing English law and system of property,—can be understood only as the Student shall have become familiar with the actual wants and evils which it was designed to meet, and, therefore, of necessity, familiar with the previously existing law upon the subject, the tricks whereby the force of that law was evaded, the priestly motives of those evasions in one view, and their indication of the feelings of the people as to the nature and extent of the rights of property in another, and the several other circumstances and events which give significancy to the enactments of that celebrated Act of

Parliament. In ignorance of all these subjects, the legal Student must necessarily fail to understand correctly and appreciate properly the force and meaning of the law. The key to its right interpretation and application is to be found in a knowledge both of its history and its philosophy; that is, in an acquaintance with the actual state of things when it was enacted, with the views and feelings of opposing parties, and with the substantial occasions and exigencies of the society for which it was made. Many other examples might be adduced to the same effect, if needful. Indeed, it can scarcely be affirmed of any single provision of the law, statutory or otherwise, that its force and meaning can be fully understood simply from an examination of the terms in which it is expressed. In almost all cases, it behoves the Student to ascertain its precise position in the series, and the relation it sustains both to preceding and subsequent provisions;—and then to aid his attempts at an elucidation of it, by considering the objects proposed to be accomplished, the state of things for which it was designed, and the feelings and prejudices whence it sprung. From all these quarters he will find a light more or less brilliant reflected upon the letter of the law; and in the knowledge of all these circumstances he will obtain an acquaintance with its spirit such as can be acquired in no other way.

Again, is a man desirous of acquiring an exact and faithful idea of the state of society in any by-gone age? Would he know history in any sense higher and truer than as a record of battles and treaties, a catalogue of princes and rulers, a table of chronology and statistics? Then must he acquire some knowledge of law both in its history and its philosophy. If he would truly realise or vividly picture to his own mind the forms and features of the several classes of society in a former age, he must not content himself with the meagre recital of external facts and events which ordinary historical chronicles present him with. He must go far deeper and learn much more. What *was* is of far more importance than what *happened*.

And this can only be known by a sedulous attention to many matters of which no account is taken in the chronological summary of events and occurrences commonly known under the name of history. To know the past to any real, valuable and practical purpose, we must go below the surface, and consider more than the public movements, wars and tumults, conventions and treaties, changes of policy and alliance, the ambition and artifice of rulers,—with which the historian is most occupied. The literature, religion, social and domestic habits, architecture, jurisprudence, and commercial, manufacturing and trading interests of a people, must all be studied, before, in any just or true sense, we can be said to know their history.

For example, the study of a nation's language has ever been deemed an excellent mode of ascertaining the character and extent of its civilization. For language is the symbol of a nation's thoughts,—the form in which they are embodied and enshrined. Hence, if it be poor, mean, obscure, unfixed, or wanting in precision, copiousness, clearness and force, the inference is both natural and just, that no great progress has been made by the people whose medium of communication it is in scientific and intellectual attainments. For language grows with the growth, and strengthens with the strength of cultivated intellect. High intelligence, profound philosophy, precise and accurate observation, keen and exact analysis, wide generalisation, demand for the conduct of their processes and the expression of their results, terms which the vocabulary of a people in the infancy of civilization cannot furnish. They are created to satisfy the demand for them, and whenever the necessity arises, that is, whenever a new accession is made to the stock of thoughts, or facts, or feelings, whenever the boundaries of science are enlarged by new discoveries, or the treasury of philosophy is enriched by a new idea, or the realm of feeling expanded by a new emotion, then the terms proper for expressing and retaining the acquisition are either borrowed from a richer dialect, or are framed for the occasion. Hence, if

any language is found to be rich in the terms best adapted to the exact and faithful expression of accurate ideas, profound emotions, and brilliant imaginings, we conclude that at one time (if not now), the people whose vocabulary is thus affluent, were a people at once highly gifted and truly cultivated; that, whatever their condition at present, they once numbered amongst them philosophers and poets, that they possessed men with heads to reason clearly, and hearts to feel deeply, and imaginations to picture vividly. And such a conclusion cannot be erroneous. Words are but the shadows, the reflections, the representatives of thoughts and things, and can acquire no existence independently of them. Hence the copiousness, precision, flexibility and strength of a nation's speech is satisfactory proof of the variety and philosophic accuracy of their notions, and of the earnestness and depth of their feelings.

Now, what has thus been affirmed in respect of language as indicative of the extent of civilization and knowledge in any case, may, in a greater or less degree, be applied to other tokens and evidences of national character and attainments. Thus, its architecture, naval and military, public and domestic; its political, ecclesiastical, social and charitable institutions; its commercial and trading customs; its systems of finance and police; its private and domestic habits and observances; all are severally indicative of a nation's civilization, as being the products and the proofs of that civilization.

But what is thus true, in a measure, of the buildings, the institutions, the manners and habits of a people,—that thence may be inferred with more or less confidence their character and condition,—may be predicated far more truly and in a far higher sense of their laws. For these are the most formal and solemn utterances of a nation's thoughts; the thoughts (ordinarily) of the wisest and most erudite among them. Their sages spoke, and the sentiment is enshrined in a custom, or embodied in an enactment. The legislators of each age comprehended its best and greatest men. Hence, upon their system of laws the

loftiest intellects have been exercised, and the labors of the most learned been accumulated. Nor is this all that renders the study of them attractive and profitable. They are the best criteria wherewith to test the actual condition, and the safest clue whereby to trace the continual progress of a nation. The statute-book of a great people is a chronological and continuous history of all its most important interests. Its religion, its liberty, its commerce, its arts, its arms, its wealth, its numbers, its enterprise, its loyalty, its crimes and excesses, are all indicated in its laws. For what are these laws but the expression of the national sentiments and opinions on these several matters; the rules prescribed in relation to them; the provisions which fluctuations in those sentiments rendered necessary; the successive devices to meet new cases, to supply new wants, correct new evils, furnish new remedies. Hence, the changing law is the surest indication of the changing phase of society; and a mere perusal of the statutes of a reign will frequently give ample and accurate information on all the most interesting and important events which were in progress in the course of it; will betoken the character and betray the fluctuations of political sentiment; will disclose the extent, the direction, and the result of commercial enterprise; will give significant intimation of the nature and working of the subsisting social relations, and the domestic condition of the several ranks of the people. For example, a nation cannot, in general, pass from being an agricultural to being a commercial, or from being a mercantile to being a manufacturing people, without the transition being to some extent marked in the national laws. So, the important change from the feodal to the modern forms of society, is abundantly proved by and easily traced in the several laws which are to pass under review in the course of these Lectures. Nor do laws *indicate only* the changes which pass upon a people: they are influential in *effecting them.* A statute, whilst it is the result of a certain state of circumstances and of feeling, is also itself the cause of another state

of circumstances and of feeling. Its origin may be traced backward to the former, its results may be traced onward to the latter. It owes its existence, at the first, to changed sentiments and altered conditions, but, being in existence, it immediately works further variations of former opinions, and further deviations from former practices. Indeed, this is, obviously, the very object proposed by it; for it is a new arrangement which is to alter the previously-existing arrangements in relation to the subject-matter of the enactment. A law is at once a change in itself, and the result of one change and the cause of others.

Finally, let me observe of law, that it is an august, a noble, a glorious thing. I shall not shew this by quoting the words of a professor, an advocate, or a jurist, nor even of a philosopher, but in the glowing language of one of the most generous hearts and most powerful pens our country has produced. The late Sydney Smith (*a*) said of law:—"Truth is its handmaid, freedom is its child, peace is its companion, safety walks in its steps, victory follows in its train; it is the brightest emanation of the Gospel, it is the greatest attribute of God; it is that centre round which human motives and passions turn; and Justice sitting on high sees genius and power and wealth and birth revolving round her throne, and teaches their paths, and marks out their orbits, and warns with a loud voice, and rules with a strong arm, and carries order and discipline into a world, which, but for her, would only be a wild waste of passions."

It now becomes our business to leave the "fountains," and to pursue only one of those "streams" which flow from them; but still I would not have it forgotten that, in our inquiries after positive law, we continue to maintain an obvious connexion with the principles of universal justice. Let us remember that we are not descending to the region of frivolous

(*a*) Works, vol. 3, p. 264.

formalities and artificial subtleties merely, but rather that we are about to examine into those most important regulations by means of which the *beneficent institution of property* has been extended and made available to ourselves,—that system pervades these rules,—and that justice is the chain by which are linked together the most prominent and the most minute parts of that system. Let us, in a word, imbibe the philosophic ardour which prompted the glowing words,—"There is not in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence, where we may contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages, withdrawing every case as it arises from the dangerous power of discretion, and subjecting it to inflexible rules,—extending the dominion of justice and reason, and gradually contracting within the narrowest possible limits, the domain of brutal force, and of arbitrary will" (*a*).

The system of law, then, which is to occupy our attention here, is a part of the law of England: of that country of which we are permitted to say, that it is distinguished amongst the nations of the earth, equally by the extent of its dominion, by the magnitude of its commerce, by the success of its arms, by its intellect, its industry, and its freedom.

But first, it is necessary to place on its true footing the office of local laws, with reference to that primary institution of property which we have already adverted to, and so to shew the connexion of these inquiries with each other, and their several bearings upon our main subject. For the question at once arises,—Have the municipal laws of a country authority in the distribution of the rights of property, and, if so, whence is it derived? Nor could the answer to this inquiry ever have appeared doubtful, but for the mystification with which the origin of all rights of property was surrounded by pseudo-

(*a*) Sir J. Mackintosh, Works, vol. 1, p. 381.

philosophical speculation in former times. In our day, however, we are content with the explanation, that, just as the origin of property itself is referrible simply to the exigencies of human society, so the office of taking note of those exigencies in respect to each independent portion of society, and thence of regulating the separation and division of its property, belongs to the law of that community; or, as it is pithily summed up by Paley, "The real foundation of our right is the law of the land" (*a*). We may safely conclude, therefore, that the municipal laws *have* authority in the distribution of property, and that such authority, as in all other cases, is derived from the will of the Supreme Disposer of the universe.

The *laws of England* possess peculiarities, and have been moulded by influences and under circumstances, that impart to their investigation a zest of pleasure, and a living practical interest, which considerably augment even the intellectual satisfaction ordinarily attending such inquiries.

For, first, our laws possess an *antiquarian interest* of no ordinary kind. Many of them are closely connected with our origin and progress as a nation, and call us back to forms of civilization long since abandoned and superseded, or, at least, very far removed from the present. The more ancient of them depict a state of society most unlike our modern notions and habits, and adapted to a far ruder period than our own; yet a condition in which the infancy of modern nations was nursed for several centuries, and whence has sprung much of the complexity and variety of our existing European governments.

Next, their formation has been, in the fullest sense and in all respects, *gradual* and *progressive*. They have been built up with the lessons of experience, and past occurrences have been the occasions of their introduction. They are not the formal edicts of an emperor, the exuberant conceptions of an

(*a*) Mor. and Polit. Phil., b. 3, part 1, c. 4.

enthusiast, or the unreasoning commands of a conqueror. Neither are they the work of one Judge, or of one Council, or of one Age, nor yet a compressed codification of the works of many Judges, many Councils, or many Ages; but, better than all these, they are the wise and sober appliances of time (which, as Sir Matthew Hale said, "is wiser than all the co-existing wits in the world") (*a*) to the solid occasions of real life, possessing the firmness and fullness of matured, with the expansiveness and pliability of early, constitutions. To build up gradually the law, in proportion as the facts arise which it is to regulate, is, as Sir J. Mackintosh observed, the only way of forming a civil code consistent with common sense.

Further, the laws of the English nation are, in the strictest sense, *their own*, or, as De Lolme expresses it, they "chose to become their own law-makers." Our laws are our own free, spontaneous productions. The allurements of ecclesiastics, with their civil and their canon laws, in former times, were met with the honest "nolumus leges Angliæ mutare" of the Barons; and their mantle has ever since rested upon their successors. True, we are a nation who acknowledge for our forefathers, not simply the Briton, but the Roman, the Dane, the Saxon, and the Norman likewise; and their blood, their manners, and their customs have mingled with the Briton's; but whatever of their laws became ultimately embodied in his, became so not as the result of arbitrary imposition or of constrained acceptance, but of ascertained affinity and congeniality. And herein consists another excellence of our laws, that they exhibit a nerve, an energy and a vigour, a diversity and a sublimity, which can be looked for only in laws resulting from various co-operating but independent and even opposite influences. The circumstances which have given to our Anglo-Saxon character the incalculable advantages arising from mixed blood and mixed manners, have

(*a*) Amendment of Laws, cap. 2.

given us a bold and enlarged jurisprudence, and have preserved us from the exclusive narrowness which might have been feared from our geographical position.

Again, our laws are, in an eminent degree, *constitutionally historical*. Whether we regard their rise and progress, the mutations they have undergone, and the indirect, unseen influences, national and social, external and domestic, which have operated to produce rules apparently arbitrary and unmeaning, or whether we consider their highly artificial and complex character, we shall find not only that many of them still retain strong marks of an ancient origin, but that many also were introduced from time to time with especial reference to the occasions, or in virtue of the power of some predominating interest which called them into being; some made to meet the political designs, or protect or extend the prerogatives of a monarch; others to strengthen the baronial power, or gratify ecclesiastical acquisitiveness; and others again, in later times, to satisfy the demands of an extended commerce, ampler civilization, and wider social improvement. Indeed, to mention but one branch, so intimately connected is our law of real property (to which I shall presently more particularly allude) with the history of the English Empire, that almost all its fundamental points may be referred to some particular events, or to some general circumstances possessing a distinct feature, to be found in the records of past times. And this remark is also, in a great degree, applicable to the whole body of English law.

Again, our laws are, to a remarkable extent, *traditional* and *customary*. They are not merely and simply the will of successive legislatures, and the wisdom of successive judges, but the habits and usages of the people, their occupations and their dispositions, have given a form and pressure to the unwritten part of our law which renders it a faithful delineator of the domestic and social habits, and the industrious tendencies of a peaceful and prosperous people. In another view of

this point, it is interesting to observe that not only does
greater part of our constitutional system, legislative, exe
tive, judicial, and ecclesiastical, rest upon tradition and imı
morial usage (a fact itself, perhaps, without a parallel in
civilized world), but the laws which regulate our gigar
mercantile interests, and the no less extensive class of p
perty denominated "personal," comprising everything
pertaining to the soil, have been deduced by judicial reas
ing from a few fundamental principles which have ever forn
part of our ancient law, and which still possess an expans
power, capable of application to new and varying circumstan
as they arise, with the certainty of a code, but without
shortsightedness and rigidity.

Accordingly, they are eminently *popular*. Not, inde
that upon all points they are liked by all classes, or even,
regard to the rallying points of partisans, that they excl
multiform discontent. But in those concerns of every
life, which, though less obtrusive are substantially of equa
not greater importance,—those which affect our homes,
counting-houses, our properties, and our freedom,—those
which the happiness, the comfort, the prosperity, the mor
and the religion of a people are most sensibly affected,—in
these, we may truly say, with Sir Matthew Hale, that "
ancient laws and customs of the people are twisted and wo
into them as a part of their nature" (*a*).

Once more, the English Laws are peculiarly *diversi*
Whether we regard their origin, their nature, the forc
their obligation, their subjects, or their provisions, we shall
fail to perceive a variety both singular and interesting.
have the common, the statute, the canon, and the civil l
we have local customs of infinite diversity; we have Cc
and jurisdictions remarkably distributed, from that excel
but singular Court the House of Lords, to the homely

(*a*) Amendment of Laws, chap. 1.

unpretending Court Leet or Court Baron. There are laws for trade as numerous as if we had no land, no agriculture; laws for land, as minute as if commerce and manufactures were not known to us; laws for the church and religion, as carefully detailed as if we were a nation without secular interests; and laws for punishment and police as particular as if we had no freedom: in the law of persons, we recognize a diversity of civil bodies and relations with differing powers, rights, and obligations; and in the law of things, a variety of tenures, titles, and estates unequalled, perhaps, in any other code; and, lastly, we have forms and methods of procedure, administrative, civil, criminal, and conveyancing, abounding in the nicest and most severe distinctions. I know that, in adverting to this remarkable feature of our jurisprudence, I am touching a topic upon which some are peculiarly sensitive—those, I mean, with whom uniformity, simplicity, and œconomical utility in laws are their best recommendation. But I would respectfully ask, to what are we to attribute this anxiously minute system of laws? Are they not the result of our own subtle, refined, and well-ordered civilization? And do not those laws pourtray and provide for the condition and the occasions of such a civilization? To the Students of English Law, therefore, I would say, that it is not a monotonous investigation of the "Constitutional Code" of one man, the "Code Civil" of another, or the "Idea of a perfect Commonwealth" of a third, to which they are invited, but a plain, unsophisticated search into the history of our country, as best explaining the fabric of its laws, which during centuries has been rearing under the care of sages and senators, statesmen, orators, and jurists, and has been moulded by the trade, the commerce, the arts, the pursuits, and usages of the people.

Again, our laws, as a whole, are of an *equal* character. They do not, in general, give a preponderating advantage to one class, or one interest, nor offensively foster one order, one tendency, or one prejudice, to the exclusion or detriment of

others. It is true that in all matters relating to property they point remotely to a feudal origin, and that they long retained familiarity with the feudal system, and even still contain semblances and marks of it. But the prejudicial operation of feudal principles was not suffered to survive the introduction and diffusion of other elements of greatness,—the peaceful, the agricultural, or the commercial. Neither is a titled or a landed aristocracy encouraged to the prostration or disparagement of the merchant or the trader. Nor yet is the free and wholesome circulation of wealth promoted in a manner incompatible with the permanency of families, the providence of their founders, or the fixedness and integrity of their estates. In these and many other respects (which may be noticed when we come to speak more particularly of the law of real property) our laws have, with singular nicety and discrimination, adapted themselves to the circumstances of a nation exhibiting a diversity and intensity of character, of interest, and of tendency, probably not exceeded in the history of any other country, or by any other people. This happy moderation in the institutions of our country has resulted in a great degree from the vigorous massiveness of the English character, but, in some degree also, from the sobriety and prudence of those for the time in authority, who, like Hale (*a*), have been convinced, that as "the matter changeth the custom, the contracts, the commerce; the dispositions, educations, and tempers of men and societies change in a long tract of time: so must their laws in some measure be changed, or they will not be useful for their state and condition." And, as to the manner of its accomplishment, the same most learned writer (*b*) aptly says, "Because the use coming in at several times, every age did retain somewhat of what was past, and added somewhat of its own, and so carried over the whole product to the quotient."

(*a*) Amendment of Laws, ch. 3.
(*b*) Ibid.

Once more, our laws are of an elaborate, comprehensive, and therefore *complicated* description: nor do they on that account deserve reproach. Simple laws cannot meet the exigencies of an advanced and refined state of society. A multitude of different interests requires for its regulation complicated machinery. And particularly is this the case when the spirit of the nation concedes extensive freedom to the play of each separate interest. The exercise of this freedom leads to the formation of a mass of rules and forms of proceeding without which the interests of all concerned would be involved in such doubt and confusion, that no Court of Judicature could hope to decide upon them, and the question of right would lapse into a personal contest for victory, in which justice would surrender the palm to the stronger or more cunning combatant, and the rightful claimant would become a victim to the *simplicity* of the laws. To suppose that all this can be avoided, and yet the unfettered action of diversified interests be retained with no other than the simplest laws for their regulation, would be as rational as to contend that a common kettle will answer equally well the purposes for which the genius of Watt contrived his steam-engine. True, the kettle on the fire will produce steam, and so (to put a case in our own branch of the law) can mere possession, or the simple production or registry of a piece of parchment, be made complete evidence of title; but the one can as well move a ship through the water, as the other will answer the purposes of a minute and elaborate settlement, destined to outlast unborn generations. To a certain extent, therefore, complexity in a system of laws is an index to the social condition of those subject to it, and the refinements and subtleties of the former are proportioned to the advantages and comforts of the latter.

Lastly, it is to be observed concerning our laws, as resulting from their progressive, their traditionary, and their equal character, that, just as they recognise and secure the harmony and congruity of the various interests embraced by them, so

is there a *contignation* in their own fabric, the work of those wise master-builders, Time and Experience (*a*). It is this which has given order and method to their discrepant materials, which has taken off the rough edge of each separate contribution, and has added the consistency and uniformity of system, to the flexibility and vigor of accumulations made without it.

Such are some of the general features which a hasty glance presents to us of the English Law—features, surely, which impart to its study an attractiveness and interest more than sufficient to counterbalance the labor and pain of mastering its rugged technicalities, and its mysteries of procedure. Adequate and impressive reasons for imbibing a deep interest in the acquisition of legal knowledge, are, let us hope, furnished by this cursory view of its bearings. For, in addition to the Student's more immediate object of becoming learned in the law, which may of itself be an ample encouragement to undertake the labor, and a support under it, the subject further possesses peculiar attractions to a philosophic and patriotic mind, in its connexion with the memorable events from which the constitutional liberties of this country and its grandeur have alike sprung. To trace the growth of civilization and of freedom, and the increase of prosperity, concurrently, and, as it were, hand in hand with the gradual expansion and improvement of our laws, must dispel that popular error which attaches to the study of the law the idea of a dry, uninteresting, and merely technical pursuit. By an application to legal science thus intelligently conducted, we shall be enabled to account for rules apparently irrational, to reconcile inconsistencies and unravel perplexities, shewing the exact influence of one rule upon another, their mutual dependence, and the way in which they minister to the wants and occasions of the highest civilization. We shall thus see not only how ill

(*a*) Hale, Amendment of Laws, cap. 2.

deserved is the odium sometimes cast upon our law, on account of its supposed barbarous origin, narrowness of spirit, and unsystematic and unwieldy structure, but likewise the extreme danger of speculative changes in the law undertaken in the vain search after an impossible perfection.

Living in a different and distant age, and one not distinguished for diffidence and forbearance, we are tempted to deride or despise what we do not immediately comprehend, and to alter or abrogate enactments, the reasons of which may be ample, though not obvious, the advantages of which may be numerous, though not obtrusive. It may be, however, that revisal and correction have become necessary by lapse of time and change of circumstances. Nevertheless, if we are justified in our forwardness to intermeddle and reform, it is of the first importance to make ourselves well acquainted with the system to be re-remodelled or removed, lest alteration should prove mischievous rather than salutary, and abolition be repented when repentance comes too late. If the legislative hand cannot or ought not to be stayed, at least it may be checked and directed; and no preparative can be devised so effectual for safe, practical, and efficient alteration of law, as a profound, enlightened, and comprehensive acquaintance with the existing system, in its reasons, its rules, and its results. Thus thoroughly understood, defects may be safely supplied, redundancies removed, inconsistencies reconciled, and deformities corrected. A right understanding and due appreciation of *what is*, may lead to an accurate conception of *what should be;* but, to design a new system in partial or entire ignorance of the old, is to tamper with the best interests of the country, and to peril its prosperity and greatness. Modern mistakes on these subjects have been sufficiently numerous to make us timid in trying further experiments, and cautious of incurring the hazards of speculative change. We confess at least to some doubt whether, having now had a little experience of the new law in the department of property, the old is not sometimes better.

At all events, an accurate acquaintance with the laws, in their history, their philosophy, and their science, whilst it is important in the due education of a gentleman, is essential to the proper equipment of a legislator, nor can he proceed satisfactorily in the discharge of his functions, unless he possess it in some good measure.

But it is time that we should proceed to bestow more particular notice upon that which forms the climax of our inquiries,—the *English law* of *real property*, as to which I trust I shall carry with me the conviction of this audience, that it suggests considerations peculiarly interesting, attractive, and important.

It is an observation which arises at the very threshold of the investigation, that laws having for their object the regulation and control of landed property, exercise a direct influence upon the condition of a nation. Few can fail to perceive, for example, that not only general prosperity, but domestic comfort, would be most prejudicially affected by an insecure or uncertain right to the possession of the land. The nearer that right approaches to absolute security in its enjoyment and transmission, and in the use of the products of the soil, and the more free it is from arbitrary or unlooked for invasion, the greater will be the stimulus to cultivate and improve the land; the greater, too, will be the amount of social comfort and national prosperity. For land which must be surrendered to the stronger hand will lie waste. It is not in human nature voluntarily to sow for others to reap. Therefore, laws which give the possessor no effectual remedies for the protection of his right, or which bear harshly upon an occupier, discouraging his labors by rendering their reward uncertain, both morally and physically tend to produce national degradation. The striking contrast between Europe peopled by predatory tribes of military wanderers, and its present condition of high and extensive cultivation, fully illustrates this.

The rules, again, regulating the disposal of land, whether by

will or deed, and whether for matrimonial or pecuniary purposes, also deeply affect both national and individual interests. A law which prevented a sale would, in effect, reduce the right of the owner to a personal enjoyment of the produce during his life, and would entail the consequences of neglected estates, and a succession of impoverished proprietors, productive of innumerable evils to large classes of society. A law which prohibited a disposition by will, but permitted a sale, would reduce the owner to the alternative of either disposing of his estate, or permitting it to descend in a manner inconsistent possibly with his moral obligations, or with the position and interests of his family. So, restriction upon the power of making settlements might reduce a wife and family to want, from the inability to guard them against the ravages of improvidence or misfortune. And, in various other ways, the importance of the subject may be displayed, which I shall presently mention in connexion specially with the characteristics of our own law of landed property.

Nor let it be considered puerile, if, adverting to another class of illustrations, we recal to mind the importance of the land, in that to it we must look for our daily food, for our clothing, for warmth, and for many other of the necessaries and conveniences of life.

The social importance of the laws of landed property is still more clearly seen, if we remember that in almost every country agriculture forms one of the most important elements of its welfare and prosperity. Now, the condition and progress of agriculture are very materially affected by such circumstances, as estates being either large and united, or, on the other hand, being numerous and small, leases being long or short, proprietors being or not being themselves the cultivators, imposts or seigniorial burthens being fixed or arbitrary, and the like.

This intimate connexion between the laws of real property and the social and even political character of a people, was recognised by one of the acutest thinkers, and one of the most

excellent men that modern times have known—one, alas! who was early taken from amongst us in the midst of his career of usefulness, but whose memory will long receive the glad homage of a people's respect and veneration. It is an observation of the late Dr. Arnold, that "he who should get the law of real property of any country in all its fulness, would have one of the most important indications of its political and social state" (*a*).

Applying this observation to the case of our own country, we might easily recognise in the former prevalence of the *feudal system*, the origin of some marked features in our national character. We should trace in it, for instance, almost the very first introduction of the aristocratic element, and the growth of the feelings with which, as a nation, we regard it. We should find in it a check upon despotism, which at various times has materially assisted the security and increase of public freedom. And we should discover in it a nourisher of those sentiments of valour and independence, of chivalry and honor, which, in more refined and less obtrusive aspects, have long formed estimable parts of our national character.

But I forbear pursuing further this topic, since it may, perhaps, be contended that the feudal polity, though mainly territorial, was not exclusively so, and that it furnishes, consequently, only a limited support to our observation. The subject, however, is an exceedingly interesting one, as all will agree, who are familiar with Lord Brougham's observations on it in his "Political Philosophy," and those of M. Guizot, in his "History of Civilization."

But let us examine a little more closely this consideration, —that the legal polity of a country, with regard to its landed property, has a very important practical influence upon the character, the pursuits, and the welfare of its people. What we say of government, and of political and religious freedom,

(*a*) Life and Correspondence, vol. 2, p. 59, 5th edition. See also his Inaugural Lecture on Modern History, pp. 24—27, 2nd edition.

we hold almost equally of the soil or land. We say that, according as the rules by which its ownership is regulated are wise, just, and politic, so will advance and be maintained the happiness and the prosperity of the whole body of the people. We scarcely concede to the most grave and weighty topics, in the adjustment of which the great and noble of all ages have taken part—those respecting the origin, distribution, and balance of political supremacy and power; toleration in the conscientious worship of our Maker; the enjoyment of unmolested personal liberty; the incorrupt administration of justice, and the like,—even to such we hardly allow any pre-eminence over the regulations of private property, in the intimacy of their connexion with the moral, social, and political well-being of a community.

Let us but consider of what *imminence* are the questions which that subject immediately suggests to us. They are such as these: whether private ownerships shall be permanent, or whether they shall be subject to a periodical re-distribution and partition; whether and how far there shall be a right of alienation; what shall be the course of succession; to what extent posthumous control may be exercised; whether a perpetual entail shall be allowed; to what extent the claims of creditors shall be preferred to those of kindred; when the prerogatives of the Crown may step in; and how far mortmain shall be permitted. True it is that varying circumstances, such as extent of territory, local situation, natural temperament, and so forth, may render the practical influence of these topics less in some nations than others; but still it is undeniable, that taking the common run of civilized countries, the internal prosperity and national strength of a people whose laws of property are conformable to the suggestions of wisdom, justice, and prudence will, *cæteris paribus*, preponderate over the success and power of a country where such considerations are neglected.

And, still further, we may easily see that excellence in the

arrangements of landed property may offer a counterpoise t political or natural inconveniences, even when existing in aggra vated forms, while inferiority or error in them may neutralize th choicest advantages and the greatest benefits, whether natura or conventional. Nor are such observations applicable only t soundness in the conception and formation of the laws: the are equally of weight with regard to the *common practice* of people in what the laws permit. By a long course of exces in, or obstinate adherence to, some forms or methods of owner ship which, intermingled with others, were harmless and ever useful, it may come to pass that an unwholesome taint is com municated to the whole system itself, giving rise to politica distempers of wider range than the institution first infected and calling for a more extensive cure than any remodelling o it could supply.

Let us not be inclined to resist the force of such reflections from an idea that the rules of property to which such importanc may be attached, are every where homogeneous, and are amon the settled axioms of civilized life, and that, consequently no distinctive attributes belong to this class of laws, in regard t the separate history and the resources of each nation. For i truth it is not so. Those arrangements of property, on th contrary, in which the welfare of a country may be mos seriously affected, either for good or evil, are, if we advert t facts, of the most diversified description. For example, i England we recognize in general no limit to the free alienatio of property: with us the idea of *alienability* is inherent in tha of perfect property. But in Scotland, in Spain, and in Franc the testamentary disposition of land is restricted. With u primogeniture is the rule of descent: with our neighbours o the continent, and in America, partible succession prevails. I England a permanent entail is impossible (if we except suc as is created from special motives by the Legislature). Acros the Tweed it is expressly authorized equally by the common an the statute law. In England the law's abhorrence of perpetuitie

is a proverb; while a large proportion of the land of Scotland is, by its own law, permanently locked up: and the like obtains in Spain also, but with the important difference, that the interest of the state may be consulted by the exercise of a dispensing power in the Crown. In England, we withhold nothing from the satisfaction of the owner's debts. In Scotland, he may gain credit from his ostensible possessions, and yet be deprived of the opportunity of according justice to those who have relied upon them. In England, a man's property is for his benefit, and when it ceases to be so, or when an exchange for money would make it more so, he brings it into the market. In Scotland, it may be an unwieldly incumbrance to the inheritor, as being burthened with charges which his fettered position compelled him first to raise at immoderate rates, and then denied him the means of discharging. In England we abolished, centuries ago, grades of seigniorial proprietors, and our farmers and builders, who use the land, take their leases direct from the lord of the domain, while all others who desire land, may procure it for themselves. In Ireland, unproductive gradations of ownership are carved out of a precarious lease, with a mere contingency of renewal, whence ensue ejectments and devastation, unlimited distress, and, finally, popular commotion. In Ireland, we see a hurtful monopoly of one dangerous species of tenure. In England, unlimited variety in the forms and modes of ownership indicates the healthy activity and enterprise of its people.

What has been above remarked of the laws of landed property in general, I shall now proceed to apply more particularly to our own, with a view to arrive at a just estimate of the close connexion between the English Laws, and the actual condition, social, moral and political, of its people.

Perhaps, indeed, the instances are rare in which it is more necessary, *naturâ rei*, closely to develope the elements of great social and organic arrangements, than in the case of the laws regulating and establishing the distribution and transmission of real property in this kingdom. For, assuredly, without such an

investigation, we shall fail justly to appreciate our law in any of the various aspects in which it must be the inclination of a reflecting mind to regard the jurisprudence of all highly civilized nations. Philosophically, we shall not understand its spirit and its system; politically, we shall not comprehend its policy; its moral, its social, and its œconomical tendencies will be but inadequately estimated; and the theory of its technicalities will be unknown. But if, on the other hand, we attentively look at it in these its several bearings, we shall, if I mistake not, discover how correctly our law-givers have estimated the general interests of society, which, (as has been well said), reduced into form, constitute the law (*a*); and we shall find it illustrating the truth already adverted to, that the laws regulating landed property, and the spirit, habits and character of a people, act and re-act upon each other.

Whether, indeed, the peculiarities and advantages of our laws, have in a greater degree resulted from our social condition, than our social condition has been affected and moulded by the laws, may be a curious and interesting question, but it is one which it were profitless conjecture to attempt to solve.

The extent to which my observations have been already carried, does not admit of more than a few remarks upon one or two features of our English Law of real property, by way of illustration of the general views which I have brought before you; and, perhaps, I can hardly select more instructive points in it than our rules of *entail, alienation,* and *primogeniture.*

Probably, there are few arrangements in the social polity of a nation, in the adjustment of which, sober judgment and comprehensive wisdom are more needed, than in determining the rights of individual landowners, with regard to the transmission of their estates in a definite line of succession or *entail.* Laws may either totally deny to proprietors the power of thus binding up the succession after their own personal enjoyment has ceased; or,

(*a*) Law Mag. vol. 37, p. 267.

while recognising the power, they may set definite bounds to the mode and the extent of its exercise; or, lastly, they may concede an unlimited discretion in the matter, without restriction either as to the stringency or the duration of the entail.

In any country where the rights of property are designed to be substantial enjoyments, and to become subservient to the encouragement of industry and the increase of wealth, it cannot be conceived that there should not be a power in every landholder to introduce to some extent his own special line of inheritance. It is clear that a very powerful incentive to honest exertion and faithful service is withheld, if a man may not found upon the basis of his success, a family and a succession, to whom, together with his name, may be securely transmitted the memorials of his probity and his industry. His own career is occupied with the labor and turmoil through which his honorable independence has been attained. His reward is the consciousness that he is building up one of those stocks and series of families, which not only impart grace and dignity to a nation, by indirectly advancing its letters, its science, and its accomplishments, but furnish it likewise with compactness and solidity.

The alternative of disallowing a power to entail, is to preclude alienation in any other than a few simple forms of gift in favor of individuals actually in existence. In a word, the proprietor might sell, and might give away, but he could not settle. He might be generous, but he could not temper his benevolence with provident safeguards. Firmness and continuity in families would, in consequence, be endangered. The distinctive features of a landed aristocracy would be lost; the beneficial influences of a local gentry, with their ancestral possessions, would be blown away; and the adventurer of to-day replacing the well-descended heir, and the money-lender of to-morrow taking occasion of such heir's necessities, would sit down for their brief day, strangers to all around, to be again substituted by occupants no less transitory and of as little consideration.

What loss to the State would there be here! Where would be

the distinction and stability of establishments rooted in ages past, and stretching forth with vigor into the future? Where would be those props and buttresses to the Government, those leaders and protectors of the people, which numerous, ancient, and firmly-fixed families, with characters to protect, independence to maintain, and names and honors and associations to cherish, so well, so beautifully furnish? Where would be the materials for an unpaid magistracy (that institution which, though some deride, Englishmen have in general learnt to value)?

If, again, we suppose the form of Government to be monarchical, mixedly and constitutionally monarchical, there is an obvious advantage and propriety in the permission of entails. The counterpart of the Crown is then seen, in each considerable family; the reverence for integrity in its succession is sustained and fostered by the quiet regularity of prevailing family descents. And yet, on the other hand, the undue exercise of the power of the Crown meets with no slight, no inefficient check in the dignified impenetrable front presented by a body of landed chiefs, with their titles and their charters as old, perhaps, as the reigning dynasty. The independence of these men is not to be bought or bartered. Loyal to the utmost extent of devotion when the interests of the people (which are their's) meet with respect, they will yet, with equal readiness, withstand any oppressive encroachments of power, and repress commotion in the classes below them.

I know it has been said by a high living authority, "that the consequences of entails are prejudicial to the happiness of families, as well as to the wealth and commerce of the country" (*a*). But this surely can be intended only of those countries in which a power of creating *perpetual, irremoveable* entails is permitted. Let us, therefore, turn our attention for a moment to such a case,—which, as I need not say, is the

(*a*) Lord Brougham, 1 Polit. Phil. 300.

reverse of that just considered. We have contended thus far only for the necessity of provisions permitting entails in some sort. Let us now take the extreme instance of laws conferring that power *without limitation or restriction.*

And here it may be at once admitted, that great as must be the disadvantages of a polity which excludes entails, far greater are the evils attendant on an unrestricted admission of them.

It may be said, that entails are thus admitted, when it is in the power of a private landholder so to bind up his estate in a series of destinations and successions, as that, until the whole of them are exhausted, it is forbidden to any single person, whether in the line of succession or not, to break the fetter, and set free the inheritance. A law such as this carries with it the notion of an absolute, illimitable power, in proprietors. But, worse than this, it at once annihilates the very foundation of all property, namely, the good of the commonwealth, and, instead of it, sanctions the corrupt dogma that it exists for the advantage of the individual, and that he has a right to do what he will with his own. It allows one of the most beneficial of all human institutions to be prostituted, not only to the most useless, but to the most injurious purposes; it offers a premium to the gratification of caprice, of vanity, and of folly; and it converts a blessing into a curse. It is a provision by the State for the diminution of its own effective wealth. It is unjust to large classes of society, as compelling them to tolerate separate private ownerships, but denying that opportunity of acquiring and sharing in them which the free circulation of land alone affords. It inflicts equal injustice even on the recipients of its ostensible bounty, by casting and rivetting upon them the burthen of what is frequently an impoverished and profitless succession. It violates largely public morality, in depriving creditors of the means of enforcing satisfaction of their just demands. It fosters in landholders, the arrogance and exclusiveness of caste, by raising a barrier between them and others, and precluding that wholesome interchange and

communion of different classes which so clearly results from the prevailing disposition of mankind to acquire an interest in the soil, combined with an actual freedom for commerce in it. It is, in a word, a plague-spot upon the face of a nation, a worm at the root of its prosperity. The progress of disease and decay may be slow, but it will be sure, unless it happen to be counteracted by the extraordinary concurrence of some vigorous and healthy powers.

What, then, is the proper mean between these two extremes? How are we to avoid the evils attendant on the exclusion, without attracting those incident to the unrestrained allowance, of entails? An inquiry this which, if there be any truth in our delineation of the consequences of error on either side, is of importance to every state.

I believe it is not stepping beyond the limits of the strictest truth and impartiality to say, that the social arrangements of our own country furnish a solution to this practical difficulty, complete and perfect. The circumstances under which this has been attained are among the most remarkable that I am acquainted with in the social and political history of any nation. They reflect glory upon our constitution; and exhibit in the strongest light, not only its power and solidity of structure, but likewise the admirable facility and accuracy of its practical working.

It is well known to most of us, that upwards of five centuries and a-half ago the Legislature enacted a law, the design, no less than the letter, of which was that full effect should be given to the intentions of settlors and testators in the transmission of entails. This law was in abrogation of the rule which previously obtained as part of the ancient common law. If its tenor had been obeyed, there can be no question but that perpetual entails would have become common, although we may readily conceive that ultimately the good sense of the people would have found means of restricting them. What the Legislature, however, effected, the Judges in a short time

verted, through the medium of legal ingenuity, and for eral centuries the English Statute-Book was substantially variance with the English Law. The doctrine of the lges was, in effect, an entire contravention of the statute, for y sanctioned fictions whereby the entail might be extinshed, and the design of its author frustrated. And not y was this rule adopted, but the Judges founded upon it ther, which carried the infringement of the statute to its ost possible extent. They determined that the right to an end to the entail was inseparable from the entail itself, l that any attempt to preclude the exercise of the right was gal and nugatory. The Legislature, as if awed by such dness, were content to leave the enactment for ages upon Statute-Book, but never re-enforced its provisions, and, imately, in the alterations of the last reign, we find express islative provision made for the determination of all entails. order to observe the precise working of this rule, and as anating from the same temper and spirit, we must further ar in mind that our Judges have, for a long course of time, en engaged in fixing the limits beyond which provision for ure generations shall not extend. And not fifteen years ve elapsed since they finally accomplished this. Nor was early attainment of the object to be expected, for it was re, as generally, the choice of our Judges to fashion the law dually with the occasion, and with all the aids of a conntly-instructed and well-fortified experience. What then is e ultimate issue of their endeavours? It is, we answer, a rule nspicuous for wise moderation and sound sense;—a rule as ar and comprehensive in its terms as it is important in its fluence;—a rule in which there is comparatively nothing bitrary, nothing forced; but all is natural, easy, and intelliole. Every lawyer knows that, by the law in question, all rms of gift are prohibited which will not necessarily take fect absolutely in favour of some ascertained individual at the piration of a limited number of years after the death of

living persons, which number of years is fixed by analogy to the period of an heir's minority. We take, then, this inflexible general doctrine in connexion, particularly, with the entails constructed by statute, and their destructibility ensured by the Judges; and the practical result of the whole is, that every landholder may secure his inheritance, not merely to the generation next below him, but to the second, third, or even fourth, provided they be the immediate successors of some one or more of his contemporaries. But beyond this he cannot go. The successor at that stage becoming, in effect, the unshackled proprietor, it rests with him and his occasions either to continue the entail or substitute another; or to bring the land into commerce; or otherwise to use it as his own. Nor can he, by refusing to disturb the entail, keep off creditors, for if they be diligent in his lifetime, the law effects an involuntary alienation, and distributes the inheritance amongst them.

In a word, England suffers stringency and permanency in entails, so far as they tend to promote all the useful purposes of those modes of succession, but it does not allow them in any hurtful form, or in any impolitic or inconvenient measure.

Without ostentation, without effort, without legislative authority, these fundamental rules, these laws of extensive social and political importance, have been produced and fashioned in the wise and sober exercise of a large discretion by a long line of Judges accurately observing, and nobly satisfying the tendencies and occasions of the people. They have not forgotten, *salus populi suprema lex;* but, on the contrary, have observed, with Bacon, that "many times the things deduced to judgment may be *meum* and *tuum*, when the reason and consequence thereof may trench to point of estate." They have remembered that "just laws and true policy have no antipathy, but that, like the spirits and sinews, one moves with the other," and that to judges "is left, as a principal part of their office, a *wise use and application* of laws" (*a*).

The next branch of our real property law which I pointed

(*a*) Essay of Judicature.

out as the subject of particular remark,—that relating to *alienation*,—is so intimately connected with the subject just discussed, that it would involve tedious repetition to give expression to all the views suggested by it. It appeared worthy, however, of separate mention, inasmuch as it enunciates distinctively a principle of the most wise and beneficial character, and gives it an application more extended than the boundary of entails. The tendency of our law everywhere visible, is to remove all impediments to the free circulation of wealth, and, consequently, to unrestricted commerce in land. It furnishes ample means and numerous appliances, it is true, for perpetuating ownerships in families, but it provides with equal clearness, that if landholders desire to dispose of their inheritances, every facility shall be afforded them for the purpose: it declares that all private attempts to impose a fetter of non-alienation are absolutely void as *ultra vires*,—as not within the disposing competency of the proprietor,—as an exercise of the right of property incompatible with the objects for which itself exists. The right to alienate, our law says in general, is inherent in the right of property, and, accordingly, as regards the highest modes of ownership known to the law, it is considered absolutely repugnant to the nature of the thing, to provide for either the exercise or the non-exercise of the right to alienate, and as regards other less interests, that power can only be withheld by providing that, upon and coincidently with the very act of alienation, the subject itself shall be taken away and given to another,—which is depriving the right by extinguishing the subject for its exercise.

If we consider the various orders and classes into which the English people are distributed, and the importance of each to our actual condition and prospects, it must be obvious at once that the principle of law now adverted to is a just and wise one. The merchant, the trader, and the manufacturer, must be encouraged to become also a landholder; and the proprietor, farmer, or agriculturist should not be hindered from engaging in the pursuits of more active commerce, if led to them by

inclination or opportunity. And if the exclusive tendencies of distinct classes may the better be corrected by such an interchange or admixture, it is probable the facilities for it which exist in England are among the circumstances which have contributed, in no small degree, to the harmonious action of the diversified interests to be found in our social condition. But, more than this, land which is marketable forms no unimportant part of the collective efficient wealth of a nation. Commerce in it, should also be facilitated as a serviceable employment of capital, which might otherwise be given to other countries, or, at least, cease to be productive in our own.

Nor must we omit to remark that an unrestricted power of *testamentary* alienation is another wise and politic feature in our laws. It would furnish an ample counterpoise to the supposed evils of entails and primogeniture, even did they really exist; and certainly it enhances the utility of those institutions, and assists their beneficial operation.

The liberal inclination of English law, therefore, to freedom of alienation, furnishes another instance of the important benefits which the regulations of private property are capable of conferring upon society.

In placing the *rule of primogeniture* in the category of wise and beneficial laws, I am aware that I incur greater risk of offending the opinions of others, than in either of the preceding instances. Yet I know not how to avoid noticing a doctrine so conspicuous in our system in an address designed to give some fair account of English real property law, nor yet, if it be introduced at all, can I resist the expression of an honest conviction, that it is in no wise deserving of reproach.

The tendency of this law is considered by some to be prejudicial to public liberty, and to the character of the people. It is said to keep land in too great masses, to extend unduly the aristocratic influence, and to encourage idleness and arrogance and an unwholesome measure of luxury, in the classes immediately benefited by it. It is supposed that a more equal

diffusion of property in families, would increase the comfort and happiness of the people; and by others again it is thought, that the consequence which undoubtedly, would follow upon the abolition of the rule,—the consequence, I mean, of proprietors becoming themselves farmers and cultivators,—would be both desirable and beneficial. And, lastly, the feelings of generosity, affection and justice are sometimes enlisted in opposition to the system.

It is a large and complicated investigation to which these suggestions point, and to enter into its details on this occasion is obviously impracticable. It is due, however, to the sobriety and importance of political science to take issue upon all these views, for they too often partake of the character of plausible invective, the offspring of narrow prejudices and vague and feverish imaginations. Doubtless, in some instances, they are convictions honestly entertained, but some will think they lack the depth, comprehensiveness and accuracy, which ought to characterize speculations on such a subject.

It might be shewn, for instance, that upon the reasonably extended size of landed estates depend the number and proportion of the disposable population, in the abundance of which class consists, in an important measure, the internal stability of a nation. It might be shewn also that the revenue of a state is prejudiced, and its resources are enfeebled, by territorial subdivision, and that such division is apt to lead to a system of taxation by which agriculture itself is crippled. And it might be shewn, further, that, instead of a wider diffusion of luxury and comfort being involved in the dispersion of estates, luxuries and comforts themselves would be indefinitely diminished, and, with them, the happiness and welfare of the classes which supply them.

To compress, however, in a small space, and in better language than any I could employ, a summary view of the benefits and advantages of primogeniture, and the evils of equalization in descents, is all that the present occasion admits

of; and for this purpose we cannot do better than turn to the pages of Dr. Chalmers, a writer to whom none will impute either political bigotry, indifference to popular comfort, or deficiency in philosophic precision. "It is the overplus produce of land," says that celebrated man, "after that the agricultural labourers and their secondaries have been fed—it is out of this, in fact, that law, and protection, and philosophy, and the ministry of religion, and art, and all that goes to decorate and to dignify human life, are upholden. It is because this overplus is possessed in quantities large enough, not only for the essential maintenance of its owners, but for enabling them, by the maintenance of others, to purchase a thousand gratifications both for the mind and the person—it is because of this, that the luxuries, whether of a more sensual or refined character, so abound in society. We feel quite assured, that a system which would fritter down this overplus into indefinitely minute portions, must tend to vulgarise a community, by absorbing, in the mere subsistence of an ever-increasing multitude of owners, what is now divided in subsistence for those who yield, in return for it, a thousand elegancies and enjoyments, that would have been otherwise unknown."—The existing "system of landed property is not only the best fitted to enrich and enable a government for the support of liberal institutions, and the effective patronage of genius, but the system is, in itself, a guarantee for the maintenance of enough of leisure, among a class sufficiently numerous to form an extensive reading public, and call forth the exhaustless varieties of an authorship, that is ever keeping the mind of society in vigorous play, and adorning it with the graces of taste and cultivation. So that, altogether, with the size and integrity of our landed estates, would we associate a greater amount of mental power and cultivation,—both the benefits and the beauties of a more intellectual and polished commonwealth."—"And it is not true, that, in virtue of elegance, and luxury, and leisure, being the inheritance of a

few, there is not a blessing in the present system of things to the whole mass of society. Under the opposite system, there would be nearly one unbroken level, the whole of which behoved, in time, to be as sunk and degraded as is the state of our present laborers. Now, it is a level rising into frequent eminences, of greater or less height, and of radiance, more or less conspicuous. And what we affirm is, that, from this higher galaxy of rank and fortune, there are the droppings, as it were, of a bland and benignant influence on the general platform of humanity. There is one very palpable evidence of this in the moral effect of a residing gentry; and we might also allege the consequent economic good of such a distribution, seeing that the moral and the economic in society are so intimately blended. The truth is, that the very elevation of mind and manners, caught, as if by infection, from the higher, forms our best security against an extreme wretchedness in the lower orders. If the people were once inoculated with a higher taste for the comforts and decencies of life, the else difficult, or rather unresolvable problem, of a secure and permanent sufficiency for all their wants, would receive its most effectual accomplishment. And we appeal to general observation, if the symptoms of such a taste are not greatly more frequent and conspicuous around the habitations of our rural aristocracy. And, independently of its virtue in raising and refining the general tone of the people, it is, surely, reasoning on the capability of things, a vast accession to a community, when there is in it a quantity of mind disengaged for general speculation, and, therefore, if under patriotic and enlightened direction, in a state for devising the best institutions and the best economy of things for the well being of a nation. Law, and education, and charity, and all the collective interests of a state, are more likely to be put on their best footing—not, we admit, where arbitrary and despotic power stands associated with great property, but where regulated freedom and respectable property are blended. We feel quite

assured, of every land of law and liberty, that, with an order of men possessing large and independent affluence, there is better security for the general comfort and virtue of the whole than when society presents an aspect of almost plebeianism. And it is of the utmost importance to the argument, that the breaking down of this affluence would ultimately do nothing for the enlarged sufficiency of the lower orders. Whatever beneficent effects, then, can with justice be ascribed to the existence and secure establishment of such an affluence—these we have all to the bargain. They form so much clear gain to the commonwealth, and though, at first sight, the whole good of it may appear to be absorbed by the children of fortune, there is, beside this absorption by them, a reflection on the commonwealth at large—a secondary influence, that is felt throughout the extent of society, and which goes down to the very humblest of its members."

With Dr. Chalmers, therefore, surely we must hold that the law of primogeniture stands essentially connected with the strength and power of a nation, and that every government is sure to wax feeble under a system by which the land crumbles into fragments.

Such, then, are some of the leading particulars of our English system of real property—its moderate and restricted entails, its freedom of alienation, and its law of primogeniture,—regulations, I may be permitted to say, which, in their practical and combined effects, and relatively to the condition and exigencies of this country, approximate as nearly as may be to completeness and perfection in this branch of jurisprudence. I shall add upon this subject only one remark. If any person desire to attain just notions of English Law from some conspicuous, commanding point, let him select the portion of it we have just considered; let him scrutinize all its parts, and weigh it as a whole; let him especially advert to its foundation in immemorial usage and in judicial determination, and its almost entire independence of positive statutes and

ordinances; let him ponder on the difference between law so constructed and so derived and express legislative decrees; let him see those laws in action, and the prevailing use of them by the people; let him, finally, observe the incalculable importance, social and political, of all laws affecting landed property,—let him do all this, and we may confidently expect, as the result, a mature conviction that in the wisdom and fitness of its internal polity, in the stability, consistence, and flexibility of its constitution, and in the nice adjustment and harmonious action of its diversified interests, the English nation is enviably distinguished throughout the world of civilization.

It remains that I make a few remarks upon the art of Conveyancing—a branch of professional practice more especially to be commended to your attention in the ensuing Lectures, and one, moreover, that suggests to all who possess property, to the nobility and landholders of this country, considerations of the greatest importance. Upon it depends the security of their title to all the property which they hold; and with the property passes the influence, the dignity, and the power with which it is associated. Hence the successful cultivation, and the due and diligent practice of the art of Conveyancing is of moment to every landowner. The fate and fortunes of unborn generations of his descendants are dependent on the skill, the learning, the accuracy, and the fidelity of the Conveyancer. The long-descended family inheritance; the broad and fruitful acres; the luxuriant park; the woods and waters, pass away, or are retained, as he rightly and skilfully exercises his vocation, or negligently or ignorantly fails in it. The affectionate parent, who would provide for a numerous family; the anxious father, who would protect his inheritance from the spoliations of a prodigal son; the devoted husband, who would secure competence to a beloved wife; the successful *parvenu*, who would enrich the unborn heirs of a modern peerage with the wealth acquired and accumulated

by his probity and industry; the philanthropist, who would endow a charitable institution; all have recourse to the skill, the learning, and the adroitness of the Conveyancer to secure the accomplishment of their several objects. The most numerous and complicated interests are by him to be considered and consulted; the most various and conflicting claims are to be met and reconciled; the most distant and improbable contingencies are to be anticipated and provided for. In the discharge of these manifold and important duties, any haste, oversight, ignorance, or inadvertence on his part may take effect ultimately in the disappointment, misery, and ruin, of those whose interests were entrusted to his care. The weight of his responsibilities in all cases it is as impossible to exaggerate, as to foretel the mischiefs entailed in any case by his carelessness or incapacity.

But although we are thus earnest in urging on Students the responsibility and difficulties of Conveyancing, it equally behoves landowners and legislators to be impressed with a sense of its importance, and to foster and encourage the independent practice of it. The tendency of modern notions is to depreciate the art, and stigmatise its professors. But if there be any truth in the views I have expressed as to its intimate connexion with the interests of the landed aristocracy, let nothing be attempted that can, by any possibility, however remote, operate to disturb the existing arrangement, by which Conveyancing is perpetuated as a separate and distinct art, and rendered worthy the pursuit of learned and accomplished men.

Nor is there an absence of occasion for fearing that those who follow this branch of the Profession, themselves sometimes entertain inadequate and imperfect views of their calling, or, rather, I would say, they occasionally allow disparaging views of it to obtain amongst their brethren in other departments and with the press, without using, apparently, so much as an effort to assert its dignity and true position. Let it not be forgotten that, next to the judge, the law of property is more habitually seen

and realized as a science by the chamber-counsel than by others, that (in the like subordination) it is moulded and improved and adapted more effectually by him than by others, that the greatest triumphs of law—the peaceful, the orderly, the kindly—are in an especial sense celebrated by him, that the judicial and deliberative qualities are frequently called forth by his engagements, that by him are applied and made practically serviceable to the transactions of mankind, those sentences of law, which, apart from the quality of being so applicable, are but useless abstractions. Let it thus be seen, that the idea which ascribes to the Conveyancer merely a physical relation to parchments and drafts, is utterly erroneous and unjust. But if his character of draughtsman must be dwelt upon, let it be asked, where, in the details of business, is there greater intellectual satisfaction than his, who, after exercising for days severely disciplined mental powers upon some complicated and elaborate composition, rejoices, on the survey of it, to find its structure bold, its provisions lucid, its arrangement logical, its expression nervous.

In bringing this Address to a conclusion, I would fain hope that the course of our inquiry has in a great measure anticipated that which I mentioned as the next topic for remark, *viz.* the *attractions* offered to our notice in the study of this science. I would indulge the expectation that, to every liberal and reflecting mind, this attempt to delineate its features has, at every turn, in spite of much imperfection in the execution, exhibited to the Student degrees of pleasing interest in the science, which will at least secure the study of it from aversion, if it may not have the power to fascinate or attach.

But there remain two or three incidental considerations worthy of notice, that have not found a place in the order of our preceding investigation. For instance, I may observe, as inspiriting and giving dignity to the study of a science like law, that such study is attended with benefit, not merely to those who engage in it, but also *to the science itself.* In the words

of one of the most learned of our own day in physical science: "There is no body of knowledge so complete, but that it may acquire accession, or so free from error but that it may receive correction, in passing through the minds of millions. Those who admire and love knowledge, for its own sake, ought to wish to see its elements made accessible to all, were it only that they may be the more thoroughly examined into, and more effectually developed in their consequences, and receive that ductility and plastic quality which the pressure of minds of all descriptions constantly moulding them to their purposes, can alone bestow"(*a*).

So again, it should be remembered, that our scientific investigation is not merely pleasurable in itself, but that it is *honorable*, as being applied to purposes more important than those of any other secular science, and as being the most immediately subservient to general safety and comfort (*b*). True, we are reproached with exercising all the powers of our minds, in the invention of subtleties, and in refinements upon doubts, by which justice is said to be defeated, or, at least, not promoted. But let this prejudice be rebuked by the honest admission of one whom none will impeach as a narrow-minded practitioner,—that more understanding has been in this manner exerted to fix the rules of life than in any other science (*c*). Let us remember, too, that the acutest and most learned in legal science may, like Sir Samuel Romilly, unite to their professional attainments, and employ them as the instruments of, a wise and active philanthropy, and a noble and efficient patriotism.

Let us further be encouraged to the vigorous prosecution of legal study by the reflection that we are therein exhibiting *moral* dignity, and are discharging a *moral* duty. To every one who regards with proper feelings the great business of life, it should become part of his very being to be fitted to bear his share in

(*a*) Sir J. Herschel, Natural Philosophy.
(*b*) Sir J. Mackintosh, Works, vol. 1, p. 380.
(*c*) *Ibid.*

it. To him it is no gratification to be only just fortunate enough to fulfil the demands upon him as they arise, and to avoid committing any great blunder. In his estimation, on the contrary, there is a true nobility of character, first, in striving to attain the largest measure of capability for the discharge of his prospective duties, irrespectively of the actual exigency, and even though fortune should for a while withhold from him her smiles; and next, in being able constantly and readily to apply to the affairs of his fellow-creatures, a solid and well-informed understanding, with confidence in himself, and advantage to them.

And so also we should remember, as some reward for the toil to be undergone in the acquisition of a sound and perfect acquaintance with law, that the *advancement of intellectual power* is commensurate with the progress made in this professional learning. The energy here brought into exercise is not exhausted on an object inconsiderable in value. The faculties drawn out in the research being of the higher order, the growth of the Student in those qualities, which distinguish the clear and acute reasoner, is steady and unfailing. It is not, indeed, to be dissembled, that in this labour no enjoyment will be found, by any discursive, trifling, or uninterested inquirer. That he may reach the mine, and find it, when reached, productive, he must explore with a resolution not to be vanquished, and a sagacity not to be eluded. Perseverance, patient and unbroken, must be not a lesson to be learnt, but a *habit* indispensable to happiness. Hence, at his very *commencement*, he will notice—and at any *later* period he will only discover it to his mortification,—that, though he is not compelled wholly to relinquish any companionship with the Belles Lettres, in which he may have hitherto found refined recreation, he *is* called on—and that *imperatively*—to watch the rise of the vague and listless state of mind so common to the lovers of most of our lighter literature.

Forcibly to the point was the resolve of Sir W. Blackstone,

when, at his outset in life, perceiving the paramount need of an application to professional study altogether devoted, he bad farewell to the Muses in verses seldom surpassed for elegance and beauty.

It will, therefore, be much to the advantage of the Student, as being calculated at once to increase his general proficiency, and to form a greater mental aptitude to his future occupations, both at Bar and in Chamber, if he cultivate a taste for writings distinguished, like those of Abercrombie, Montesquieu, Burke, and Mackintosh, for profound inquiry, condensed reasoning, and elevated sentiment. Authors, like these, though they cannot give their reader a logical mind, or perceptive power, denied him by Nature, yet obviously strengthen intellect, where existing only in a weak or nascent state. I am speaking, of course, now, of the sources to which, when, for an hour or day, laying aside the tomes of strictly legal lore, he turns to any non-professional works, as to aliment necessary either for his relief or peculiar mental organization. Some retirement from the rigid and protracted absorption of his faculties in law-studies may be harmlessly and even wisely sought. Policy and good sense, however, alike demand his careful choice of such alleviation as shall not enfeeble thought, —such, rather, as shall carry onwards, by other channels, the purpose which, to him, must be ever primary, of mastering the philosophy of his Profession.

It was, probably, the uniform remembrance of *το πρεπον* in their hours of relaxation by Lord Stowell and Sir W. Jones, which brought more prominently forward their consummate judgment and profound erudition, while it formed a diction, both oral and written, never surpassed for grace, and nerve, and dignity. To see clearly, to think deeply, and to argue closely, are qualifications, for which, even in his very moments of leisure, the Student, aspiring after distinction, must be in uninterrupted pursuit. For a career hereafter in any degree remarkable for mental excellence, as will be one, I say

not of extensive, but only of partial success, the *preparation* must be in every point wholly intellectual. The severe *Student* alone makes the skilful practitioner.

But, surely, the *encouragements* to this unwearied application are both great and numerous. Irrespectively of the benefits attending success in the future *practice,* is there not great delight in store also from future *retrospection?*

To find, as a result of previous application, difficulties rapidly vanishing, and labour becoming light,—to return, by force of habit, almost unconsciously, and, therefore, with ease, to occupations requiring careful and profound investigation,—to concentrate authorities widely scattered, and unravel intricacies closely complicated,—these are amongst the attainments of the scientific lawyer, prospectively certain to the determined and untiring Student.

Doubtless, it is true, that if, more than others, any one department of the Profession requires from the Student indomitable energy and unbroken perseverance, it is that in which a complete general acquaintance with the laws of real property is more immediately needed. Of this severe application, after as well as before our entering on practice, and perhaps even to the close of our professional life, I will not extenuate, for I cannot deny, the imperious necessity. But could *they,* who, by general consent, have won for themselves the highest place in the foremost ranks—the lights departed, and the lights still brightly shining—could they speak to us from their elevated position, would not their tone be one of inspiriting encouragement? Justly exciting in us the desire of professional distinction, as would the eloquence of their *example,* would they not foster that desire as an influential principle in study,—as tending to make labor easy and obstacles few?

And may I not further add what is, indeed, happily and generally known, that, of the different Professions, success in no one is more readily open to the humblest of its members, than in ours,—there is no one, in which that success less

depends on influence, and, so to say, lucky events, on fortuitous circumstances or adventitious aid: and though superior natural talents will materially facilitate the progress of the *determined* Student, and make his ascent to fame, distinction, and wealth, speedier and less rugged, yet (often have we been told it on high authority) such talents, however great or splendid, will not *alone* do. Nay, if inert and uncultivated, if not sedulously applied to the increase and enlargement of professional learning, they will not only be useless, but even obstructive of success.

> —Ingenium, longâ rubigine læsum
> Torpet, et est multo quam fuit ante, minus
> Fertilis assiduo si non renovetur aratro
> Nil nisi cum spinis gramen habebit ager.

Let us hear also the words of a powerful writer already quoted, in which are forcibly and eloquently depicted the merit and the incidents of professional success. "They have withstood the allurements of pleasure, which is the first and most common cause of failure; they have disdained the little arts and meannesses which carry base men a certain way and no further; they have sternly rejected also the sudden means of growing basely rich, and dishonorably great, with which every man is at one time or another sure to be assailed; and then they have broken out into light and glory at the last, exhibiting to mankind the splendid spectacle of great talents long exercised by difficulties, and high principles never tainted with guilt"(*a*).

To say a few words respecting the *dispositions* and *habits of mind* to be cultivated—

First, let us bring to the study of the English law an *ingenuous, docile* disposition. Let us not come to it pre-occupied with disparaging doubts as to its dignity, its worthiness, or its justice; nor distrustful of its right to require the submission of high intellects or well-disciplined understandings. Let us give full scope to the impression, that a body of law constituted

(*a*) Sidney Smith, Works, vol. 3, p. 246.

under circumstances so favorable, and in a manner so judicious as ours, will, probably, upon intimate acquaintance, discover to us wisdom and fitness, where, on a first examination, may appear to be chiefly deformity and uselessness. Let us keep our minds open to the results of that mature and unbiassed reflection, for which practical use and observation will furnish the best materials. I do not say that we shall find any thing like perfection in our laws. Indeed, it is the error of being too much bent upon such a discovery, that leads to the dissatisfaction with them, which some imbibe so soon, but from the premature participation in which I venture to dissuade the honest Student. There are, undoubtedly, errors and defects in the system, and, occasionally, they are such as not to admit of extenuation. But acquaintance with such instances will not generate in a mind unprepossessed with continental systems and foreign modes of thought and investigation, a general dislike of the science and system of our law. Nor will they induce us to sympathize with such representations of it, as that it is "an empire of chaos and darkness," abounds in "wanton distinctions," is a system of "disgraceful character," and distinguished for "caprices" (*a*).

Next, it is indispensable that Students of English real property law should be on their guard against a preponderating attention to the artificial *mysteries* and *technicalities*, which are found more especially in that department of our jurisprudence. Sometimes it seems to be forgotten that they are of value only as they enunciate and apply to practical uses, those great *principles* of the science in which mankind are concerned. Beyond what these purposes require "everything," as has been well said, "that tends to clothe science in a strange and repulsive garb, and everything that assumes an unnecessary guise of profundity and obscurity, should be sacrificed" (*b*).

But, on the other hand, the Student must constantly exert

(*a*) Austin, Outline of Lectures on Jurisprudence, pp. 45—55.
(*b*) Sir J. Herschel, Natural Philosophy.

himself to apprehend, and (as it were) to clench the *distinctions* in these mysterious technicalities, for, without doing so, discriminatingly and with severity, there will inevitably result confusion and want of precision in his notions concerning many departments in our highly artificial and complex system. In fact, the mystery will be to him more mysterious, and the technicality more technical. By not informing himself of their origin, and appreciating their meaning, he (as far as in him lies) deprives the system of the benefit they are capable of affording, and casts upon it the odium of being surrounded by the inaccessibilities of craft. Some there are to be met with who can scarcely retain for a moment, with distinctness and freshness, scientific terms and idioms. I have known a shifting limitation turned into a remainder, an executory devise into a use, and a proviso for redemption into an equity of redemption. Any tendency to a failing of this kind, I need hardly say, is inimical to progress in professional knowledge, and in scientific study.

In selecting a basis for my proposed course of Lectures, I have felt the want of a fitting text-book. It is unnecessary to explain the reasons which have led me to consider no one of our existing commentaries or treatises suitable or adequate to the purpose. The result, however, of some attention to this point is, that I propose, whenever necessary, to take the statute-book as the text of my Lectures. There are advantages incident to such a course manifest and decided. It is true, as I have already observed, that some of the most important parts of our system of property do not depend upon the authority of the supreme Legislature, but, nevertheless, it would be found, I think, that the body of statutes furnish ample materials, suggesting and raising incidentally, although not directly providing for, those points. We shall be led, in fact, by the contents of the statute-book, to all the subjects which can possibly fall within the compass of even a protracted course of Lectures on our real property law; and, by observing a proper degree of system and arrange-

ment in the examination of its provisions, we shall attain a clear and connected view of the several departments of the science. It is not desirable to attempt, in any laborious measure, its logical distribution, for that process would inevitably prove fallacious and unreal, if applied largely to the practical rules and doctrines of law; conceding all the while, however, its excellence in scientific investigation generally. But if our inquiries be not frequently suspended upon some specific provisions of law for the time under immediate consideration, there will be almost imperceptibly a tendency to pursue the details and suggestions of system in regard to every branch of our diffuse and widely-extended subject. Having nothing precise and definite to call us back when the immediate occasion of the excursion is answered, we should have no right,—certainly should be unable,—to stop short of anything less than thorough exploration. We should, in fact, be under the necessity of merging the Lecture in the Treatise. But, independently of the disadvantages attending such a confusion of the distinct forms and objects of these two modes of instruction, it is clear it would be utterly chimerical to attempt presenting by Lectures within any reasonable compass a complete view of the whole body of the law; and yet if the rigour of system be once entered upon, there would be no excuse in not pursuing it to completeness, for it is in that, the benefits of such a mode of investigation principally consist.

In distributing, therefore, the science of English real property law, it has appeared to me that we shall not go far wrong if we advert to the process of inquiry which an intelligent person may be supposed to pass through, who, on first turning his thoughts to becoming a landed proprietor in England, should, with practical earnestness, consider the various points and aspects in which the feasibility and desirableness of the project ought to be viewed and investigated. Such a person would, probably, endeavour to ascertain what *right in the soil* could legally be acquired; *who* might acquire it, and *how;*

what would be the *nature and qualities* of the ownership; v differences in the *duration and mode* of the ownership the would permit; in what the *enjoyment* of such an owner would consist, or, rather, what *rights* and *obligations* would incident to it; by what rules its *deprivation, alienation, transmission* would be governed; and to what methods descriptions of *settlement* he might resort. Now, if we serve the nature and extent of these inquiries of obv importance, we shall find very little of our real prop law that is not embraced by them: and we shall at the s time find their order natural, and their tendency pract Such, therefore, in general, and without descending to ticulars, are the features of the primary division by whi propose to distribute our Law of Real Property.

I have said enough, probably, to shew that particular rea exist in the case of a system of positive law like ours, wh fore an attempt at logical precision in its arrangement sh be restricted within somewhat narrow limits. But I have authority of Mr. Austin, a noted writer on jurisprudence the assertion, that, to a considerable extent, our law of property shares this inaptitude for precise distribution, *most other* systems of positive law. His words are: "Who reads and reflects on the arrangement of a *corpus juris*, perceive that it cannot be constructed with logical rigour. members or parts of the arrangement being extremely nu rous, and their common matter being an organic whole, can hardly be *opposed* completely. In other words, arrangement of a *corpus juris* can hardly be so constructed, none of its members shall contain matter which logi belongs to another. If the principles of the various divi were conceived and expressed clearly; if the departu resulting from the divisions were distinguished broadly; a the necessary departures from the principles were marked spicuously; the arrangement would make the *approach* to lo

completeness and correctness, which is all that its stubborn and reluctant matter will permit us to accomplish (*a*).

With regard to the proceedings which will accompany the Lectures, I may conveniently state, first, what in point of time and order will be last. The design of these proceedings is to afford to all who may desire it, opportunities of *obtaining honors in English Real Property Law.* To this end, the practical termination of each year's course will be the formation of a *class* or *list*, to be restricted to a limited number, say six or twelve; places in which will be allotted to those six or twelve Students, who, as the result of the course, have attained the foremost rank in proficiency, as tested by the mootings and examinations. None but these six or twelve will be placed, and those gentlemen, therefore, who do not try for, or who do not obtain, a position in the list, will not in any way be prejudiced. The precise number of which the class is to be composed, will depend upon the number of attendants upon the course. And if need should on any occasion arise for extending the limit, in order to avoid injustice to candidates with equal or but slightly inferior merit, a reasonable extension will be provided for. Further, it will be observed, that *publicity* may probably be given to the honors thus attained. With regard to the point, what Students are to be considered qualified for a place in this list in each year, I may remark, the qualification will point to the Student's proximate call to the Bar. All Students, consequently, who, at the time fixed for the publication of the class, should have kept nine out of twelve terms, or a like proportion in the case of gentlemen going to the Irish Bar, would be qualified to be placed, since, by the supposition, their call might take place before the conclusion of the ensuing course. And it would not be necessary to provide any different regulation for those who, although

(*a*) Outline, 57.

they should have kept the proper proportion of terms, might, from want of sufficient standing, as in Lincoln's Inn, or from insufficient age, as here and in the Middle Temple, not occupy a position to be called within the ensuing year. Such gentlemen, therefore, would be qualified to stand, equally with those to whose proximate call there should be no impediment. Whether it should be considered open to any who, having joined in a year's course, and being qualified to be placed, were not included in the year's list, to become candidates for a place in it on the next occasion, is a point which may remain for consideration. In reference to the converse case, that, namely, of Students who in the current year are not qualified, but who, nevertheless, take part in the exercises, I should wish it most clearly understood that any merits they might exhibit in that year would not be fruitless, but would be taken into account (assuming their attendance continued), in the distribution of places in the year of their qualification. It remains to observe, that the allocation of the candidates in each year, although it would be immediately preceded by a *special examination*, would not depend upon the results of that examination only, but conjointly, or in connexion with the results of the *ordinary lecture examinations* and *other exercises*, of which, in brief terms, I now proceed to speak. Superiority, therefore, at the final examination would not alone suffice, unless sustained by a corresponding position, or by one not strongly marked with inferiority, throughout the bulk of the course.

In order to provide opportunities for a *personal competition and discussion between Students*, different classes of exercises will be offered to them, of which advantage may be taken or not, according to their choice. For example, points admitting of debate, or requiring investigation, will be set down on paper and given out by the Lecturer, and any Student invited to come forward and express his opinion on the case, with the grounds of it. After he has done so, it will be open to any other Student to express his opinion, either dissenting or affirmatory, with the

reasons of it. And when two opposite or different views have been expressed, the Student first coming forward, will be asked to reply to the argument of his friend on the other side. Upon which the Lecturer's opinion will be given. If neither view should be correct, he will merely express the grounds for negativing both, and again give out the question for other answers and arguments thereon, until a good or satisfactory reply is received. Regulations will be made for securing equal opportunity of joining in the discussions to all Students: and it will be necessary to avoid all rhetorical display not incidental to the strict statements of opinions and arguments. In the class of cases just mentioned, time for previous preparation will not be afforded, inasmuch as the questions put in this form will not be abstruse.

Again, the Lecturer will provide other cases of a more difficult and recondite description, to be argued upon (as briefs for particular parties) by one or two on the side of each separate interest, with time allowed for preparation; a reply by the senior Student on the opening side to be made; upon which the Lecturer, while giving his opinion, will enter into the subject and the several arguments upon it, and shew on which side, collectively, they were wrong, and wherein they were individually so on any side. Due opportunities for obtaining the position for replying may, perhaps, be secured to all Students desiring it.

Authorities should be adduced by the competitors in this last class of cases, except where the argument is such as cannot fairly be required to be supported by authority. It will further be necessary, in order to economise time, to limit, the duration of each Student's argument to a certain number of minutes.

And so, again, for those who attend the exercises, a *doubtful case* or cases will from time to time be set down on paper, to be answered here, in writing, separately by each Student, with reasons and authorities for the several views taken by him.

Finally, there will be examinations in the *subjects of the Lectures,* for those who think proper to submit to them. These examinations will be written, and will take place in the Hall once every fortnight; so that there will be one examination for two Lectures; and the corresponding evening in the alternate week will be given to mootings and arguments. For the first few weeks, should any considerable number of Students present on the examination-evenings, prefer another description of exercise, a case for opinion will be given out to be answered, while those who join in the examination are preparing their answers. But these cases for opinion, although they may possibly bear upon the subject of the preceding Lectures, will not invariably arise out of them, or be referrible to what was then said. The name of each Student will be required to be affixed to his paper, and the Lecturer will intimate, at the succeeding meeting, which are the proper answers, by reading out some one of the most correct replies to each query, but without stating publicly the name of the answerer, or more particularly pointing out errors or defects. In this way each Student, by comparing the answer selected with what he gave as his own, will know the result of the examination as it respects himself; and, should occasion ever arise to preclude any one of the answers from being read out as perfectly correct, the best will be taken, and its insufficiency explained.

With reference to the point which may possibly arise as to gentlemen who have been called joining in the exercises, I can only say they will be equally welcome with the Students, if it be agreeable to themselves; but it will probably be necessary to restrict their competition with Students for honor, by confining the qualification to such as shall have but very recently been called.

Thus, let us attempt, in sobriety and moderation, to ascertain, how far a revival, by these measures, of former usages may conduce, in these our times, to the promotion of sound, effi-

cient, practical education in the science of real property law. Let each one and all of us take up the motto, *ut discant indocti, et ament meminisse periti.* If there be reproach in the absence heretofore of an ordeal whereby to test the qualifications of candidates for the Bar, let us wipe it away by using and turning to some good account, with all the grace of a voluntary adoption, plans such as those now proposed: if, on the other hand, there be no ground for the reproach, let us shew it by the most conclusive of all proofs,—the exhibition, without compulsion, of our actual proficiency and attainments.

ABSTRACT OF AN OUTLINE

OF

A COURSE OF LECTURES

ON

The English Laws of Real Property.

I.—The Acquisition of Real Property, or Ownerships therein.

II.—The Nature and Qualities of Ownerships in Real Property.

III.—The Duration, Quantity, and Mode of Ownerships in Real Property.

IV.—The Enjoyment of Ownerships in Real Property.

V.—The Deprivation, Alienation, and Transmission of Ownerships in Real Property.

VI.—The Settlement of Ownerships in Real Property.

I.—Of the Acquisition of Real Property, or Ownerships therein.

Real property,—what?

I. What may be acquired.

Hereditaments.

1. Corporeal.

Real—tenements.

Personal.

2. Incorporeal.
   Real—tenements.
   Personal.

Estates and interests in hereditaments.
The different kinds of estates and interests.

2. Who may acquire,—and therein of disabilities.
   Persons qualified.
   „ disqualified.
   Corporations.
   What? and their kinds.
   Mortmain, and license of the Crown.
3. The mode of acquisition.
   1. Purchase for money.
   2. Gift.
   3. Succession under settlement.
   4. Succession *ab intestato.*
      Descent.
      Personal representation.
   5. Other successions in law.
      Bankruptcy.
      Insolvency.
   6. Devise.
   7. Escheat and forfeiture.
   8. Occupancy.
   9. Marriage.
   10. Possession and prescription.
   11. Particular custom.

II.—The Nature and Qualities of Ownerships in Real Property.

Tenancy, and not dominion.
Nature.
Incidents.
Legal and equitable ownerships.
Uses and trusts, and their incidents.

Freehold and chattel ownerships.

Therein, of constructive conversion in equity.

Distinctions of tenure.

1. Freehold.
2. Copyhold.
3. Customary Freehold.
4. Ancient demesne.
5. By special agreement.

III.—THE DURATION, QUANTITY AND MODE OF OWNERSHIPS IN REAL PROPERTY.

Duration and quantity.

1. Freehold estates.
    1. Descendible.
        1. Fee { Simple. / Qualified. / Conditional. / Base. }
        2. Estate-tail.
            General.
            Special.
    2. Not descendible.
        1. Estate tail after possibility of issue extinct.
        2. Estate for life (proper).
            1. Conventional, or by express grant.
            2. By law { Curtesy. / Dower. }
        3. Estate indeterminate, but not necessarily for life.
            Durante viduitate.
            Dum sola, &c.
    3. Descendible *sub modo.*
        Estate *per autre vie.*
2. Estates less than freehold.
    1. Estate for years.

1. For years certain.
2. For years determinable with lives.

2. Estate by statute-merchant, and statute-staple.
3. Estate by *elegit*.
4. From year to year.
5. At will.
6. On sufferance.

3. Estates on condition.
   1. Condition precedent.
   2. Condition subsequent.
   3. Pledge,
      Vivum vadium.
      Mortgage, or *mortuum vadium.*

Time of enjoyment.

4. Estates in succession.
   1. In possession.
   2. Not in possession, or future.
      1. In reversion.
      2. In remainder { vested. / contingent.
      3. In expectancy.
         Springing, shifting and future uses, powers of appointment, &c., and their properties.
         Executory devises and bequests, and their properties.
      4. Forfeiture, extinguishment and merger of future estates.

Mode.

5. Number and connexions of owners.
   1. Sole, or in severalty.
   2. Joint.
      1. In joint-tenancy.
      2. In common.
         1. Simply.
         2. With cross-gift to survivors.

3. In coparcenary.
4. By entireties.
5. Severance and partition of joint ownerships.
6. Connection with a partnership in trade.

IV.—The Enjoyment of Ownerships in Real Property.

1. Rights.
    1. Use and cultivation.
        Waste.
        Draining.
        Repairs.
        Mining.
    2. Leases.
    3. Emblements.
    4. Alienation, pledge and exchange.
2. Obligations.
    1. Use and cultivation.
        Waste.
        Repairs.
        Mining.
    2. Debts.
        In lifetime.
        After death.
    3. The rights of mortgagees and special incumbrancers.
    4. Marriage.
3. Other incidents of ownerships.
4. Disabilities or incapacities of personal enjoyment or management.
    Legal or judicial representation or guardianship.
5. Injuries or wrongful acts, and their redress.
    Breach of contract.
    Trespass.
    Nuisance.
    Waste.

Disturbance.
Subtraction.
Abatement.
Intrusion.
Disseisin.
Discontinuance.
Deforcement.
Ouster.
Injuries by the Crown.

V.—The Deprivation, Alienation and Transmission of Ownerships in Real Property.

Deprivation.

1. Forfeiture, escheat, lapse, &c.
2. Bar by time.
   - The Crown.
   - Ecclesiastical corporations.
   - Private persons.
   - Land.
   - Advowsons.
   - Easements.
   - Profits *à prendre*.
   - Rents.
3. Merger and extinguishment.
4. Alienation or succession *in invitum*.
   1. Bankruptcy and insolvency.
   2. Judgment.

Alienation.

1. Who may alienate.
2. What may be alienated.
   - What subjects.
   - What interests.
3. The allowed purposes or objects of alienation.
   - Considerations.
   - Fraud upon creditors and purchasers.

4. The modes of alienation.
    1. By will.
        Its solemnities.
        Its interpretation.
        Its operation.
    2. By delivery and investiture.
    3. By deed.
        1. Kinds of deeds.
            Indenture.
            Deed-poll.
        2. Solemnities.
        3. Interpretation.
        4. Deeds which operate as assurances.
            Operation, in different cases.
            At common law.
            Under the Statute of Uses.
            Under other statutes.
        5. Deeds which charge or discharge merely.
    4. According to special custom.
        1. By surrender and admittance.
        2. Other modes.
    5. By tortious assurance.
        1. Fine.
        2. Common recovery.
        3. Feoffment.
    6. By Act of Parliament.
    7. By appointment under a power.
    8. By contract.
    9. Nuncupative or oral.
    10. By marriage.
5. The sale of ownerships.
    1. By public auction.
    2. By private contract.

Mistakes.

Allurements of Civil & Canon laws resisted by sedulous use of Anglica veritas. 23.